

079912.246

S.I.C.

DISCUSSION DRAFT
January 17, 198599th CONGRESS
1st Session

S. _____

IN THE SENATE OF THE UNITED STATESMr. Stevens introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend title 5, United States Code, to establish a new
retirement and disability plan for Federal employees, postal
employees, and Members of Congress, and for other purposes.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,
3 That this Act may be cited as the "Civil Service Pension
4 Reform Act of 1985".

PURPOSES

Sec. 2. The purposes of this Act are--

7 (1) to provide Federal employees with a retirement
8 (benefits) plan which is comparable to good private sector
9 retirement (benefits) plans;

10 (2) to promote financial stability and flexibility
11 for the future of each Federal employee;

12 (3) to ensure a fully funded and financially sound
13 Federal Government retirement (benefits) plan;

14 (4) to enhance portability of retirement assets
15 between Federal jobs and jobs outside the Federal
16 Government;

17 (5) to increase the options of each Federal employee
18 with respect to retirement benefits (plans);

19 (6) to encourage Federal employees to increase
20 personal savings;

redundant

S.I.C.

079910.046

2

1 (7) to include Federal employees in the investment
 2 decisionmaking process with respect to the assets of the
 3 retirement system; and

4 (8) to extend financial protection from disability to
 5 additional Federal employees and to increase such
 6 protection for eligible Federal employees.

7 TITLE I--CIVIL SERVICE PENSION SYSTEM

8 ESTABLISHMENT

9 Sec. 101. (a) Title 5, United States Code, is amended by
 10 inserting after chapter 83 the following new chapter:

11 ``CHAPTER 84--CIVIL SERVICE PENSION SYSTEM

``SUBCHAPTER I--DEFINITIONS; CIVIL SERVICE PENSION SYSTEM

``Sec.

``8401. Definitions.

``8402. Civil Service Pension System; participation.

``8403. Relationship to the Social Security Act.

``SUBCHAPTER II--BASIC PLAN

``8411. Entitlement.

``8412. Deferred retirement.

``8413. Computation of annuity.

``8414. Reduction for early retirement.

``8415. Reduction for survivor annuities.

``8416. Methods of Payments.

``8417. Funding.

``SUBCHAPTER III--THRIFT SAVINGS PLAN

``8421. Contributions.

``8422. Vesting.

``8423. Entitlement and elections relating to entitlement.

``8424. Annuities: methods of payment; election; and
 computation.

``8425. Administrative provisions relating to payments and
 elections.

``8426. Thrift Savings Fund.

``8427. Investment of Thrift Savings Fund.

``8428. Accounting.

``SUBCHAPTER IV--SURVIVOR BENEFITS

``8431. Basic plan benefits relating to death of a
 participant.

``8432. Basic plan benefits relating to death of a former
 participant.

``8433. Survivor benefits under the thrift savings plan.

``8434. Survivor benefits for former spouses: entitlements;
 amount.

``8435. Survivor benefits for former spouses: elections,
 deposits and collections, and administrative
 provisions.

``8436. Termination of entitlement.

``SUBCHAPTER V--DISABILITY BENEFITS

079910.046

S.I.C.

3

- ``8441. Definitions.
- ``8442. Entitlement.
- ``8443. Computation of benefits.
- ``8444. Application.
- ``8445. Medical examinations.
- ``8446. Offers of alternative employment.
- ``8447. Recovery or restoration of earning capacity.
- ``8448. Relationship to workers' compensation.
- ``8449. National Guard technicians.
- ``8450. Funding.

``SUBCHAPTER VI--GENERAL AND ADMINISTRATIVE PROVISIONS

- ``8451. Responsibilities.
- ``8452. Cost-of-living adjustment in basic plan annuities, survivor annuities, and disability benefits.
- ``8453. Rate of benefits.
- ``8454. Accrual and termination of annuities.
- ``8455. Waiver, allotment, and assignment of benefits.
- ``8456. Application for benefits.
- ``8457. Court orders.
- ``8458. Annuities and pay on reemployment.

``SUBCHAPTER VII--TRANSITION PROVISIONS

- ``8471. Elections.
- ``8472. Transfer participants.
- ``8473. Participants retaining entitlement in the Civil Service Retirement and Disability System.
- ``8474. Participants hired during temporary adjustment period.
- ``8475. Exemption from offset provision of the Social Security Act.

``SUBCHAPTER VIII--CIVIL SERVICE THRIFT INVESTMENT BOARD

- ``8491. Establishment; membership.
- ``8492. Functions.
- ``8493. Powers of the Board.
- ``8494. Powers of the Executive Director.
- ``8495. Administrative provisions.
- ``8496. Fiduciary responsibilities; liability and penalty.

1 ``SUBCHAPTER I--DEFINITIONS; CIVIL SERVICE (PENSION) SYSTEM

2 ``S 8401. Definitions

3 ``Except as otherwise provided in this chapter, for the
4 purposes of this chapter--

5 ``(1) the term 'account', when used with respect to a
6 participant or annuitant, means an account established
7 and maintained under section 8428 (a) of this title;

8 ``(2) the term 'annuitant' means a former participant
9 who is entitled to an annuity under this chapter and who
10 has applied under this chapter for the payment of the
11 annuity to begin;

12 ``(3) the term 'average pay', when used with respect
13 to a participant, means the largest annual rate resulting

S.I.C.

079910.046

4

1 from averaging the participant's rates of basic pay in
2 effect over any five consecutive years of creditable
3 service or, in the case of an annuity under this chapter
4 based on service of less than five years, over the total
5 service, with each rate weighted by the time it was in
6 effect;

7 "(4) the term 'basic pay', when used with respect to
8 a participant--

9 "(A) means the lesser of--

10 "(1) the basic pay of the participant
11 established pursuant to law, without regard to
12 any provision of law limiting the rate of pay
13 actually payable in any pay period (including any
14 provision of law restricting the use of
15 appropriated funds); or

16 "(ii) the rate of basic pay payable for
17 level I of the Executive Schedule; and

18 "(B) includes the items described in
19 subparagraphs (A) through (D) of paragraph (3) of
20 section 8331 of this title and does not include the
21 items excluded by such paragraph;

22 "(5) the term 'Board' means the Civil Service Thrift
23 Investment Board established by section 8491 (a) of this
24 title;

25 "(6) the term 'Civil Service Retirement and
26 Disability Fund' means the Civil Service Retirement and
27 Disability Fund referred to in section 8348 of this
28 title;

29 "(7) the term 'court', when used with respect to a
30 judgment, decree, order, or other judicial action, means
31 any court of the United States, a State, the District of
32 Columbia, the Commonwealth of Puerto Rico, or a territory
33 or possession of the United States, or any Indian court,
34 having jurisdiction to issue such judgment, decree, or

1 order or to take such other judicial action;

2 "(8) the term 'Director' means the Director of the
3 Office of Personnel Management;

4 "(9) the term 'dynamic assumptions' means economic
5 assumptions that are used in determining actuarial costs
6 and liabilities of a retirement system and anticipate the
7 effects of long-term future--

8 "(A) investment yields,

9 "(B) increases in rates of basic pay, and

10 "(C) rates of inflation;

11 "(10) the term 'earning', when used with respect to
12 the Thrift Savings Fund, means the amount of the gain
13 realized or yield received from the investment of sums in
14 such fund;

15 "(11) the term 'eligible former spouse', when used
16 with respect to a participant or former participant,
17 means a former spouse of the participant or former
18 participant if--

19 "(A) the participant or former participant
20 performed at least 18 months of civilian service
21 covered under this chapter as a participant or
22 subchapter III of chapter 83 of this title; and

23 "(B) the former spouse was married to the
24 participant or former participant for at least 9
25 months; *during service*

26 "(12) the term 'employee' means--

27 "(A) each individual referred to in
28 subparagraphs (A), (E), (F), (H), (I), and (J) of
29 section 8331 (1) of this title; and

30 "(B) a Congressional employee as defined in
31 section 2107 of this title, including a temporary
32 Congressional employee;

33 any of whose service after December 31, 1983, is
34 employment for the purposes of title II of the Social

079910.046

6

1 Security Act and chapter 21 of the Internal Revenue Code
2 of 1954, except that such term does not include any
3 individual referred to in clause (i), (v), (vi), or (ix) *why not*
4 of paragraph (1) of section 8331 of this title or in the *it (other*
5 undesignated material after clause (ix) of such *ret system*
6 paragraph, any individual excluded under section 8402 (b)
7 (2) of this title, or any individual who was subject to
8 subchapter III of chapter 83 of this title on December
9 31, 1983, and has not elected to transfer to the System
10 or to commence participation in the System pursuant to
11 section 8471 (a) of this title;

12 "(13) the term 'Executive Director' means the
13 Executive Director of the Board;

14 "(14) the term 'firefighter' has the same meaning
15 provided in section 8331 (21) of this title;

16 "(15) the term 'Fund' means the Civil Service
17 Retirement and Disability Fund;

18 "(16) the term 'Government' has the same meaning
19 provided in section 8331 (7) of this title;

20 "(17) the term 'law enforcement officer' has the
21 same meaning provided in section 8331 (20) of this title;

22 "(18) the term 'loss', when used with respect to the
23 Thrift Savings Fund, means the amount of the loss
24 realized from the investment of sums in such fund;

25 "(19) the term 'lump-sum credit' has the same
26 meaning as provided by section 8331 (9) of this title;

27 "(20) the term 'Member' has the same meaning as
28 provided by section 2106 of this title, except that such
29 term does not include a Member who was subject to
30 subchapter III of chapter 83 of this title on December
31 31, 1983, and has not elected to transfer to the System
32 or to commence participation in the System pursuant to
33 section 8471 (a) of this title;

34 "(21) the term 'net earnings' means the excess of

079910.246

S.I.C.

7

1 earnings over losses;

2 "(22) the term 'net losses' means the excess of
3 losses over earnings;

4 "(23) the term 'normal cost', when used with respect
5 to an annuity of a participant, means the entry-age
6 normal cost of the annuity, computed by the Office in
7 accordance with generally accepted actuarial practice and
8 standards (using dynamic assumptions) and expressed as a
9 level percentage of the basic pay of the participant;

10 "(24) the term 'Office' means the Office of
11 Personnel Management;

12 "(25) the term 'participant' means an employee or
13 Member; *to receive payment of benefits*

14 "(26) the term 'price index' has the same meaning as
15 provided in section 8331 (15) of this title;

16 "(27) the term 'service', when used with respect to
17 a participant or former participant, means employment of
18 the participant or former participant (while a
19 participant) that would be creditable under section 8332
20 of this title if the participant or annuitant were
21 subject to subchapter III of chapter 83 of this title
22 instead of this chapter (and is not credited for the
23 purposes of the application of such subchapter to the
24 participant or former participant) and credit for unused
25 sick leave;

26 "(28) the term 'supplemental liability', when used
27 with respect to a fiscal year, means the estimated excess
28 of--

29 "(A) the sum of--

30 "(1) the present value of all benefits
31 payable from the Fund after such fiscal year to
32 participants and former participants, and to
33 their survivors, under this chapter, computed in
34 accordance with generally accepted actuarial

079910.046

S.I.C.

2

practice and standards (using dynamic assumptions),

“(ii) the excess of the amount of the administrative expenses incurred by the Office in carrying out this chapter during such fiscal year over the amount of the administrative expenses estimated for such fiscal year for the purposes of clause (iii) of this paragraph at the end of the preceding fiscal year; and

“(iii) the estimated amount of the administrative expenses that the Office will incur in carrying out this chapter during the ensuing fiscal year; over

“(B) the sum of--

“(i) the total amount of the contributions made on behalf of participants pursuant to section 8417 (a) of this title;

“(ii) the present value of the contributions to be made on behalf of participants pursuant to such section 8417 (a);

“(iii) the amount of the net earnings from investment of sums contributed on behalf of participants pursuant to such section 8417 (a); and

“(iv) the present value of the amount of the net earnings expected to be realized from investment of sums contributed on behalf of participants pursuant to such section 8417 (a); and

“(29) the term ‘System’ means the Civil Service Pension System described in section 8402 (a) of this title.

“§ 8402. Civil Service Pension System; participation

“(a) The provisions of this chapter comprise the Civil

079910.246

S.I.C.

9

1 Service Pension System.

2 "(b) (1) Except as provided in paragraph (2) of this
3 subsection, each employee and Member shall be a participant
4 in the System.

5 "(2) (A) The Office may exclude from the operation of
6 this chapter an employee or group of employees in or under an
7 Executive agency whose employment is temporary or
8 intermittent, except an employee who occupies a position as
9 part-time career employment (as defined in section 3401 (2)
10 of this title).

11 "(B) The Architect of the Capitol may exclude from the
12 operation of this chapter an employee under the Office of the
13 Architect of the Capitol whose employment is temporary or of
14 uncertain duration.

15 "(C) The Librarian of Congress may exclude from the
16 operation of this chapter an employee under the Library of
17 Congress whose employment is temporary or of uncertain
18 duration.

19 "§ 8403. Relationship to the Social Security Act

20 "Except as otherwise provided in this chapter, the
21 benefits payable under the System are in addition to the
22 benefits payable under the Social Security Act.

23 "SUBCHAPTER II--BASIC PLAN

24 "§ 8411. Entitlement

25 "(a) An employee or a Member who is separated from
26 employment by the Federal Government after becoming 55 years
27 of age and completing 30 years of service is entitled to an
28 immediate annuity.

29 "(b) An employee or a Member who is separated from
30 employment by the Federal Government after becoming 62 years
31 of age and completing 10 years of service is entitled to an
32 immediate annuity.

33 "(c) An employee who is separated from employment by the
34 Federal Government after becoming 55 years of age and

*not 61-20
no 5 yr. req.*

079910.046

S.I.C.

12

1 completing 25 years of service as a law enforcement officer
2 or firefighter, or any combination of such service totaling
3 at least 25 years, is entitled to an immediate annuity.

4 "(d) An employee who is separated from employment by the
5 Federal Government after becoming 55 years of age and
6 completing 25 years as an air traffic controller is entitled
7 to an immediate annuity.

8 "(e) (1) Except as provided in paragraph (2) of this
9 subsection, any employee who has completed 25 years of
10 service, or is not less than 50 years of age and has
11 completed 20 years of service, and who--

12 "(A) is separated from employment by the Federal
13 Government involuntarily, except by removal for cause on
14 charges of misconduct or delinquency; or

15 "(B) while serving in a geographic area designated
16 by the Director, is voluntarily separated from employment
17 by the Federal Government during a period that--

18 "(1) the agency in which the employee is serving
19 is undergoing a major reorganization, a major
20 reduction in force, or a major transfer of function;
21 and

22 "(11) a significant percentage of the total
23 number of employees serving in such agency will be
24 separated or subject to an immediate reduction in the
25 rate of basic pay (without regard to subchapter VI of
26 chapter 53 of this title or comparable provisions);
27 as determined by the Director, is entitled to an immediate
28 annuity.

29 "(2) An employee described in paragraph (1) (A) of this
30 subsection is not entitled to an annuity under this
31 subsection if the employee has declined a reasonable offer of
32 another position in the employee's agency for which the
33 employee is qualified and the offered position is not lower
34 than two grades (or pay levels) below the employee's grade

079910.046

S.I.C.

11

1 (or pay level) and is within the employee's commuting area.

2 "(f) An annuity authorized by this section is computed
3 under sections 8413 through 8415 of this title.

4 "§ 8412. Deferred retirement

5 "(a) A participant who is under 62 years of age and
6 separates from employment by the Federal Government after
7 completing 10 years of civilian service is entitled to an
8 annuity beginning on the date the participant becomes 62
9 years of age.

10 "(b) An annuity authorized by this section is computed
11 under sections 8413 through 8415 of this title.

12 "§ 8413. Computation of annuity

13 "(a) Except as provided in section 8414 or 8415 of this
14 title, the amount of the annuity a former participant is
15 entitled to receive under this subchapter shall be equal to
16 the product of 0.85 percent of the former participant's
17 average pay ⁽⁴⁺⁵⁾ (while serving as an employee or Member)
18 multiplied by the number of the participant's total years of
19 service.

20 "(b) (1) Except as provided in section 8415 of this
21 title, a former participant who is entitled to receive an
22 annuity under subsection (c) or (d) of section 8411 of this
23 title and is under such age on the date the annuity commences
24 shall be entitled to receive an annuity supplement, in
25 addition to the amount of the annuity computed under
26 subsection (a) of this section, while under such age.

27 "(2) The amount of the annuity supplement payable to a
28 former participant under paragraph (1) of this subsection
29 shall be equal to the amount of the benefits that--

30 "(A) the former participant would be entitled to
31 receive under title II of the Social Security Act if the
32 participant were 62 years of age on the date the annuity
33 referred to in such paragraph commences; and

34 "(B) is attributable to service referred to in

1 section 8411 (c) or 8411 (d) of this title, as
2 applicable,
3 increased as provided in paragraph (3) of this subsection.
4 "(3) Effective on January 1 of each year, the amount of
5 the annuity supplement computed under paragraph (2) of this
6 subsection shall be increased by the percent increase, if
7 any, in the index of national salaries and wages published
8 for November of the preceding year over the index of national
9 salaries and wages published for November of the next
10 preceding year.

11 "§ 8414. Reduction for early retirement

12 "(a) Except as provided in subsection (b) of this
13 section, the annuity computed under section 8413 (a) of this
14 title (without regard to this section or section 8415 of this
15 title) for a participant separating from employment by the
16 Government entitled to an immediate annuity shall be reduced
17 by one-sixth of one percent for each full month the
18 participant is under 62 years of age on the date of
19 separation. *Commutatory date of annuity*

20 "(b) Subsection (a) of this section does not apply in
21 the case of a participant entitled to an immediate annuity
22 under section 8411 (c) or 8411 (d) of this title.

23 "§ 8415. Reduction for survivor annuities

24 "(a) The annuity of a former participant computed under
25 section 8413 of this title (including an annuity supplement
26 computed under subsection (b) of such section) and, if
27 appropriate, under section 8414 of this title shall be
28 reduced by such amount as may be appropriate such that the
29 total amount of the retirement benefits expected to be
30 payable to the former participant under this subchapter and
31 all survivor benefits expected to be payable with respect to
32 the former participant pursuant to sections 8432 and 8434 of
33 this title is equal to the total amount of the retirement
34 benefits that would be expected to be payable under this

079910.046

S.I.C.

13

1 subchapter to the former participant pursuant to the method
2 referred to in section 8416 (b) (1) of this title, determined
3 in accordance with generally accepted actuarial principles
4 and standards.

5 "(b) A reduction in the annuity of a former participant
6 pursuant to subsection (a) of this section shall be adjusted,
7 as appropriate to carry out such subsection, to reflect any
8 election made pursuant to subsection (b), (c), or (d) of
9 section 8435 of this title.

10 "§ 8416. Methods of Payment

11 "(a) (1) The Office shall prescribe methods of payment
12 of annuities under this subchapter.

13 "(2) The Office shall include among the methods of
14 payment prescribed under paragraph (1) of this subsection--

15 "(A) a method providing for the payment of a monthly
16 annuity only to a former participant entitled to the
17 annuity during the life of the former participant; and

18 "(B) a method providing for the payment of a monthly
19 annuity for the joint lives of a former participant and
20 the spouse of the former participant and the life of the
21 one of them who survives the other of them.

22 "(b) Subject to section 8432 of this title--

23 "(1) under such regulations as the Office shall
24 prescribe, each former participant shall elect one of the
25 methods of payment prescribed by the Office under
26 subsection (a) of this section; and

27 "(2) the annuity of the former participant under
28 this subchapter shall be paid in accordance with the
29 method of payment elected by the former participant
30 pursuant to paragraph (1) of this subsection.

31 "§ 8417. Funding

32 "(a) (1) The employing agency of a participant shall
33 contribute to the Fund for each participant employed by the
34 agency an amount equal to the normal cost of an annuity under

079910.046

S.I.C.

14

✓ 1 this subchapter for such participant.

2 “(2) The contribution required by paragraph (1) of this
3 subsection to be made for a participant shall be made from
4 the appropriation or fund used to pay the participant, or, in
5 the case of an elected participant, from an appropriation or
6 fund available for payment of other salaries of the office or
7 establishment of the participant. In the case of a
8 participant in the legislative branch who is paid by the
9 Clerk of the House of Representatives, contributions for the
10 benefit of such participant shall be paid from the contingent
11 fund of the House of Representatives.

✓ 12 “(b) (1) The Office ^(of) shall compute--

13 “(A) the amount of the supplemental liability of the
14 Fund relating to participants and former participants
15 other than participants and former participants referred
16 to in subparagraph (B) of this paragraph, and

17 “(B) the amount of the supplemental liability of the
18 Fund relating to participants and former participants who
19 are active or retired officers or employees of the United
20 States Postal Service,

21 as of the close of each fiscal year beginning after September
22 30, 1985.

23 “(2) The amounts of any supplemental liability--

24 “(A) computed pursuant to paragraph (1) (A) of this
25 subsection with respect to participants and former
26 participants referred to in such paragraph (1) (A) of
27 this subsection, and

28 “(B) computed pursuant to paragraph (1) (B) of this
29 subsection with respect to participants and former
30 participants referred to in such paragraph (1) (B),
31 shall each be amortized in thirty annual installments.

✓ 32 “(3) At the end of each fiscal year, the Office shall
33 notify--

34 “(A) the Secretary of the Treasury of the amount of

079910.046

S.I.C.

15

the annual installment computed under paragraph (2) (A) of this subsection for such fiscal year, and

“(B) the Postmaster General of the United States of the amount of the annual installment computed pursuant to paragraph (2) (B) of this subsection for such fiscal year.

“(4) (A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit the amount of the annual installment computed for such fiscal year pursuant to paragraph (2) (A) to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

“(B) Upon receiving a notice required by paragraph (3) (B) of this subsection, the United States Postal Service shall pay the amount of the annual installment specified in the notice. The amount paid shall be credited to the Fund.

“SUBCHAPTER III--THRIFT SAVINGS PLAN

“§ 9421. Contributions

“(a) (1) Each participant may contribute to the Thrift Savings Fund in any fiscal year any amount not exceeding ten percent of the participant's annual rate of basic pay.

“(2) Each former participant receiving disability benefits under subchapter V of this chapter may, until becoming 62 years of age, contribute to the Thrift Savings Fund in any fiscal year any amount not exceeding ten percent of the amount of the former participant's disability benefits payable under such subchapter during such fiscal year.

“(3) Any contribution under this subsection shall be made only pursuant to a program of regular contributions to be made at the end of each pay period of the participant, or at the end of each disability benefits payment period in the case of a disabled former participant, under such regulations as the Board shall prescribe.

“(b) The employing agency of a participant who

1 contributes to the Thrift Savings Fund under subsection (a)
2 of this section for any pay period, or, in the case of a
3 disabled former participant who contributes to such fund
4 under such subsection for any disability benefits payment
5 period, the employing agency of the former participant on the
6 date of onset of the disability, shall contribute to the
7 Thrift Savings Fund for the benefit of such participant or
8 disabled former participant at the end of such period an
9 amount equal to twice such portion of the amount of the
10 contribution of the participant or former participant as does
11 not exceed four percent of the amount of the gross pay or
12 gross disability benefits, as the case may be, payable for
13 such period.

14 “(c) The sums required to be contributed to the Thrift
15 Savings Fund by an employing agency under subsection (b) of
16 this section for the benefit of a participant or disabled
17 former participant shall be paid from the appropriations or
18 funds available to such agency to pay the basic pay of
19 participants or, in the case of an elected participant, from
20 an appropriation or fund available for payment of other
21 salaries of the participant's office or establishment. In the
22 case of a participant in the legislative branch who is paid
23 by the Clerk of the House of Representatives, contributions
24 for the benefit of such participant shall be paid from the
25 contingent fund of the House of Representatives.

26 “(d) For purposes of the Internal Revenue Code of 1954--

27 “(1) any amount of the participant's pay which is
28 contributed to the Thrift Savings Fund and the amount of
29 the employing agency's matching contributions shall not
30 be included in the gross income of the participant, and

31 “(2) the Thrift Savings Fund shall be treated, for
32 purposes of determining when amounts in such Fund are
33 included in the income of any participant, as described
34 in section 401 (a) of such Code.

079912.046

S.I.C.

17

1 ``S 8422. Vesting

2 `` (a) (1) A participant who separates from employment by
3 the Government shall be entitled to an amount equal to--

4 `` (A) the sum of the total amount of the
5 contributions made under section 8421 (a) of this title
6 and the total amount of the net earnings in the Thrift
7 Savings Fund attributable to such contributions; and

8 `` (B) the applicable percentage of the sum of the
9 total amount contributed to the Thrift Savings Fund for
10 the benefit of the participant under section 8421 (b) of
11 this title and the total amount of the net earnings in
12 the Thrift Savings Fund attributable to such
13 contributions, as provided in subsection (b) of this
14 section.

15 `` (2) The amount to which a participant is entitled under
16 paragraph (1) of this subsection shall be payable in
17 accordance with the election made by the participant pursuant
18 to section 8423 of this title.

19 `` (b) (1) For the purpose of subsection (a) (1) (B) of
20 this section, except as provided in paragraph (2) of this
21 subsection, the applicable percentage for a participant
22 separating from employment by the Government after having
23 been a participant in the System for a period set forth under
24 column I of the table below is the percentage set forth under
25 column II of the table below opposite the description of such
26 period:

Column I	Column II
Period for which the participant has been a participant in the System:	Applicable percentage:
Less than 2 years	0
Not less than 2 years, but less than 3 years.	25
Not less than 3 years, but less than 4 years.	50
Not less than 4 years, but less than 5 years.	75
Not less than 5 years	100.

27 `` (2) For the purposes of subsection (a) (1) (B) of this
28 section, the percentage applicable in the case of any
29 participant who dies while employed by the Government shall

279913.046

S.I.C.

18

1 be 100 percent.

2 § 8423. Entitlement and elections relating to entitlement

3 "(a) Any participant who separates from employment by
4 the Government entitled to an immediate annuity under section
5 8411 of this title is entitled and may elect--

6 "(1) to receive an immediate annuity from the Thrift
7 Savings Fund;

8 "(2) to defer the commencement of the payment of an
9 annuity from the Thrift Savings Fund until such date as
10 the participant specifies;

11 "(3) to withdraw, in one payment, the amount of the
12 balance credited to the participant's account in the
13 Thrift Savings Fund as of such date; or

14 "(4) to transfer the amount of the balance in the
15 account to an individual retirement account or other
16 qualified plan (within the meaning of the Internal
17 Revenue Code of 1954) of the participant.

18 "(b) Subject to section 8425 (d) of this title, any
19 participant who separates from employment by the Government
20 before becoming entitled to an immediate annuity under
21 section 8411 of this title is entitled and may elect--

22 "(1) to receive an annuity from the Thrift Savings
23 Fund commencing when the participant becomes 62 years of
24 age;

25 "(2) to withdraw, in one payment, the amount of the
26 balance credited to the participant's account in the
27 Thrift Savings Funds (subject to the limitations set out
28 in section 8422 (a) (1) of this title), payable when the
29 participant becomes 62 years of age; or

30 "(3) to transfer such amount to an individual
31 retirement account or other qualified plan (within the
32 meaning of the Internal Revenue Code of 1954) of the
33 participant.

34 "(c) (1) Subject to paragraph (2) of this subsection,

879917.046

S.I.C.

19

1 any participant making an election pursuant to subsection (a)
2 (2) of this section may modify the date specified in the
3 election.

4 "(2) Any modification under paragraph (1) of this
5 subsection may not specify a date for the commencement of
6 annuity payments earlier than one month after the date such
7 modification is filed with the Board.

8 "(d) (1) Notwithstanding any other provision of this
9 section, except as provided in paragraph (2) of this
10 subsection, a participant who has transferred to the System
11 under section 8471 (a) (1) of this title shall not be
12 entitled to receive benefits under this section before the
13 date five years after the date the participant commenced
14 participation in the System.

15 "(2) Paragraph (1) of this subsection shall not apply in
16 the case of a deceased participant or a person who is
17 disabled for the purposes of subchapter V of this title.

18 "§ 8424. Annuities: methods of payment; election; and
19 computation

20 "(a) (1) The Board shall prescribe methods of payment of
21 annuities under this subchapter.

22 "(2) The Board shall include among the methods of
23 payment prescribed under paragraph (1) of this subsection--

24 "(A) a method providing for the payment of a monthly
25 annuity only to a former participant during the life of
26 the former participant;

27 "(B) a method providing for the payment of a monthly
28 annuity for the joint lives of a former participant and
29 the spouse of the former participant and the life of the
30 one of them who survives the other of them;

31 "(C) a method described in subparagraph (A) of this
32 paragraph providing for annual increases in the amount of
33 the annuity payable; and

34 "(D) a method described in subparagraph (B) of this

1 paragraph providing for annual increases in the amount of
2 the annuity payable.

3 "(b) Under such regulations as the Board shall
4 prescribe, each former participant electing under section
5 8423 (b) of this title to receive an annuity from the Thrift
6 Savings Fund shall elect one of the methods of payment
7 prescribed by the Board under subsection (a) of this section.

8 "(c) (1) Subject to paragraph (2) of this subsection,
9 the amount of the annuity payable under this subchapter to a
10 former participant pursuant to the method elected under
11 subsection (b) of this section shall be determined, as of the
12 date on which the payment of the annuity under the elected
13 method commences, in accordance with generally accepted
14 actuarial principles and standards based on the balance in
15 the annuitant's account on such date.

16 "(2) The total amount of all retirement benefits
17 expected to be payable to a former participant under this
18 subchapter and all survivor benefits expected to be payable
19 with respect to the former participant pursuant to an
20 election made under subsection (b) of this section and
21 pursuant to section 8434 of this title shall be equal to the
22 total amount of the retirement benefits that would be
23 expected to be payable under this subchapter to the former
24 participant pursuant to the method referred to in subsection
25 (a) (2) (A) of this section, determined in accordance with
26 generally accepted actuarial principles and standards.

27 "(3) The amount of the annuity payable to a former
28 participant under this subchapter shall be redetermined if--

29 "(A) an individual entitled to a survivor annuity
30 pursuant to an election made under subsection (c) of this
31 section or pursuant to section 8434 of this title dies or
32 loses the entitlement to the survivor annuity; or

33 "(B) the former participant makes an election
34 pursuant to section 8435 of this title.

1 “(d) At the end of each fiscal year, the investment
2 experience relating to the account of each annuitant in the
3 Thrift Savings Fund shall be compared to the actuarial
4 assumptions that were used to compute the amount of the
5 annuity payable from the Thrift Savings Fund to the annuitant
6 under this subchapter during such fiscal year. Under
7 regulations issued by the Board, the excess of the amount of
8 the return, if any, over the amount of the assumed return
9 shall be used to purchase an additional annuity payable from
10 the Thrift Savings Fund. The amount of the additional annuity
11 shall be computed by the Board in accordance with generally
12 accepted actuarial principles and standards.

13 “§ 8425. Administrative provisions relating to payments and
14 elections

15 “(a) The Board shall make payments and transfers in
16 accordance with an election of a participant under section
17 8423 or 8424 (b) of this title.

18 “(b) Any election under section 8423 or 8424 of this
19 title shall be in writing and shall be filed with the Board
20 in accordance with such rules as the Board may prescribe.

21 “(c) Notwithstanding any other provision of this
22 section, an election or modification of an election under any
23 provision of this subchapter shall not be effective if the
24 election or modification would result in a violation of the
25 terms of an applicable court decree of divorce, annulment, or
26 legal separation, or the terms of any court order or court-
27 approved property settlement agreement incident to a court
28 decree of divorce, annulment, or legal separation, as
29 determined by the Executive Director.

30 “(d) (1) A participant may make an election authorized
31 by paragraph (2), (3), or (4) of section 8423 (b) of this
32 title--

33 “(A) only if the spouse and each eligible former
34 spouse of the participant are notified of the

1 participant's election; and

2 "(B) in any case in which there is an eligible
3 former spouse, shall be subject to the terms of a court
4 order or decree issued with respect to such former spouse
5 if--

6 "(1) the order or decree expressly relates to
7 any portion of the amount involved, and

8 "(ii) payment of the amount in accordance with
9 the election would extinguish entitlement of the
10 former spouse to a survivor annuity under section
11 8434 of this title or to any portion of an annuity
12 under section 8457 of this title.

13 "(2) (A) Notification of a spouse or eligible former
14 spouse under this subsection shall be made in accordance with
15 such requirements as the Board shall by regulation prescribe.

16 "(B) Under the regulations, the Board may provide that
17 paragraph (1) (A) of this subsection may be waived with
18 respect to a spouse or eligible former spouse if the
19 participant establishes to the satisfaction of the Board that
20 the location of such spouse or former spouse cannot be
21 determined.

22 "(3) The Board shall prescribe regulations under which
23 this subsection shall be applied in any case in which the
24 Office receives two or more applicable court orders or
25 decrees.

26 "§ 8426. Thrift Savings Fund

27 "(a) There is established in the Treasury of the United
28 States a Thrift Savings Fund.

29 "(b) The Thrift Savings Fund consists of the sum of all
30 amounts contributed under section 8421 of this title
31 increased by the total net earnings from investments of sums
32 in the Thrift Savings Fund or reduced by the total net losses
33 from investments of the Thrift Savings Fund.

34 "(c) The sums in the Thrift Savings Fund are

079912.246

23

S.I.C.

1 appropriated and shall remain available without fiscal year
2 limitation--

3 "(1) to invest under section 8427 of this title;

4 "(2) to pay benefits under this subchapter;

5 "(3) to pay the administrative expenses of the
6 Board; and

7 "(4) to make loans to participants as provided in
8 subsection (e) of this section.

9 "(d) (1) Except as provided in paragraph (2) of this
10 subsection, sums in the Thrift Savings Fund are not subject
11 to execution, levy, attachment, garnishment, or other legal
12 process.

13 "(2) Moneys due or payable from the Thrift Savings Fund
14 to any individual shall be subject to legal process for the
15 enforcement of the individual's legal obligations to provide
16 child support or make alimony payments as provided in section
17 459 of the Social Security Act (42 U.S.C. 659).

18 "(e) Under such regulations as the Board shall
19 prescribe, the Board may make loans from the Thrift Savings
20 Fund to a participant in case of hardship. *Should be limited to*
individuals account

21 "(f) The sums in the Thrift Savings Fund shall not be
22 appropriated and may not be used for any purpose other than
23 the purposes specified in this section.

24 "\$ 8427. Investment of Thrift Savings Fund

25 "(a) Subject to subsections (b), (c), and (d) of this
26 section, the Board--

27 "(1) may invest the sums available in the Thrift
28 Savings Fund for investment--

29 "(A) in interest-bearing securities of the
30 United States Government;

31 "(B) in interest-bearing securities of any State
32 or a political subdivision thereof;

33 "(C) in interest-bearing or equity securities of
34 any private business concern;

879910.046

S.I.C.

24

1 "(D) in real estate; and
2 "(E) in any other assets the Board considers
3 appropriate; and
4 "(2) shall determine the appropriate distribution of
5 investments among the assets listed under paragraph (1)
6 of this subsection.

7 "(b) (1) Except as provided in subsection (c) or (d) of
8 this section, once each year, a participant or former
9 participant may elect the general type or types of
10 investments, as designated by the Board under section 8492
11 (a) (2) of this title, into which the Board shall invest sums
12 in the Fund credited to the account of such participant or
13 former participant and the distribution of such sums among
14 the types of investments elected.

15 "(2) The election of a participant or former participant
16 under paragraph (1) of this subsection shall be made in
17 accordance with rules prescribed by the Board and within such
18 period after the date the participant's or former
19 participant's annual statement is transmitted to the
20 participant or former participant pursuant to section 8428
21 (c) of this title as the Board shall prescribe in such rules.

22 "(c) (1) At the end of the first calendar month during
23 which title I of the Civil Service Pension Reform Act of 1985
24 takes effect, the amounts contributed by a participant to the
25 Thrift Savings Fund under section 8421 (a) of this title and
26 the amounts contributed to such fund for the benefit of such
27 participant under section 8421 (b) of this title shall be
28 invested in interest-bearing securities of the United States
29 Government.

30 "(2) (A) The Board shall invest a percentage of the
31 total amount that--

32 "(1) is contributed to the Thrift Savings Fund by a
33 participant under section 8421 (a) of this title during a
34 month described under column I of the table of

1 distribution of investments set out in subparagraph (B)
2 of this paragraph, and

3 "(ii) is available for investment,
4 in interest-bearing securities of the United States
5 Government, as specified under column II of the table
6 opposite the description of such month.

7 "(B) For the purposes of subparagraph (A) of this
8 paragraph, the table of distribution of investments is as
9 follows:

<u>"Column I</u> Number of the month after the month des- cribed in paragraph (1) of this subsection:	<u>Column II</u> Minimum percentage of the contribu- tions made by a participant for the month to be invested in United States Government securities:
1 through 12	100
13 through 24	75
25 through 36	50
37 through 48	25.

10 "(3) (A) The Board shall invest a percentage of the
11 total amount that--

12 "(i) is contributed to the Thrift Savings Fund by
13 the Government for the benefit of a participant pursuant
14 to section 8421 (b) of this title during a month
15 described under column I of the table of distribution of
16 investments set out in subparagraph (B) of this
17 paragraph, and

18 "(ii) is available for investment,
19 in interest-bearing securities of the United States
20 Government, as specified under column II of the table
21 opposite the description of such month.

22 "(B) For the purposes of subparagraph (A) of this
23 paragraph, the table of distribution of investments is as
24 follows:

<u>"Column I</u> Number of the month after the month des- cribed in paragraph	<u>Column II</u> Minimum percentage of the contribu- tions made for
----------------------------------------------------------------------------------------	------------------------------------------------------------------------------

079910.046

S.I.C.

26

(1) of this
subsection:

the benefit of
a participant for
the month to
be invested in
United States
Government
securities:

1 through 60	100
61 through 72	87.5
73 through 84	75
85 through 96	62.5
97 through 108	50
109 through 120	37.5
121 through 132	25
133 through 144	12.5

1 “(4) All sums credited to the Thrift Savings Fund
2 pursuant to section 8472 (a) or 8474 (b) of this title shall
3 be invested in interest-bearing securities of the United
4 States Government.

5 “(5) The sums invested in interest-bearing securities of
6 the United States Government as required by this subsection
7 and returned to the Thrift Savings Fund after maturity of the
8 securities, and the amounts earned on the investment of such
9 sums, shall be reinvested in interest-bearing securities of
10 the United States Government.

11 “(d) In investing sums in the Thrift Savings Fund in
12 equity securities of private businesses the Board shall not
13 acquire such an extensive ownership interest in any private
14 business that the Board, without the concurrence of other
15 owners of the private business, can elect any officer of the
16 private business or require the adoption of any policy for
17 the management of the private business.

18 “§ 8428. Accounting

19 “(a) (1) The Board shall establish and maintain an
20 account for each participant making contributions under
21 section 8421 (a) of this title.

22 “(2) The balance in the account of a participant or
23 former participant at any time is the excess of--

24 “(A) the sum of--

25 “(i) all contributions made to the Thrift
26 Savings Fund by the participant or former participant

079910.046

27

S.I.C.

1 under section 8421 (a) of this title;

2 "(ii) all contributions made to such fund for
3 the benefit of the participant or former participant
4 under section 8421 (b) of this title;

5 "(iii) the amounts transferred from such fund
6 with respect to the participant or former participant
7 under section 8472 (a) ^{before 1-1-61} or 8474 (b) ^{after 12-31-83} of this title; and

8 "(iv) the total amount of the allocations made
9 to and reductions made in the account pursuant to
10 paragraph (3) of this section, over

11 "(B) the amounts paid with respect to such
12 participant under sections 8411, 8412, 8433, and 8434 of
13 this title.

14 "(3) Pursuant to rules prescribed by the Board, the
15 Board shall allocate to the credit of the account of each
16 participant or former participant an amount equal to a pro
17 rata share of the net earnings and net losses from each
18 investment of sums in the Thrift Savings Fund attributable to
19 sums credited to the account of such participant, reduced by
20 an appropriate share of--

21 "(A) the administrative expenses of the Board, and

22 "(B) any amount reserved by the Board to pay
23 underfunded annuities,
24 as determined by the Board.

25 "(b) Each employing agency shall report to the Board at
26 the end of each month all amounts contributed by or for the
27 benefit of each participant during such month under section
28 8421 (b) of this title.

29 "(c) The Board shall provide each participant and former
30 participant an annual statement of the balance in the
31 participant's or former participant's account.

32 "SUBCHAPTER IV--SURVIVOR BENEFITS

33 "§ 8431. Basic plan benefits relating to death of a
34 participant

Transfer

1 “(a) If a participant dies after performing eighteen
2 months of service and before separating from employment by
3 the Government, death benefits shall be paid as provided in
4 this section.

5 “(b) Except as provided in subsection (c) of this
6 section, the surviving spouse of a deceased participant
7 referred to in subsection (a) of this section shall be
8 entitled to a survivor annuity equal to the higher of--

9 “(1) the amount equal to 50 percent of the annuity
10 computed with respect to the deceased participant
11 pursuant to sections 8413 and 8414 of this title as if
12 the participant had retired from employment by the
13 Government entitled to an immediate annuity under section
14 8411 of this title on the day before the date of death of
15 the participant; or

16 “(2) the amount equal to the excess, if any, of--

17 “(A) the amount equal to 30 percent of the
18 average pay of the deceased participant, over

19 “(B) the amount payable to the surviving spouse
20 pursuant to subsection (e), (f), or (g) of section
21 202 of the Social Security Act by reason of the death
22 of the participant, if any, based on the service of
23 the deceased participant.

24 “(c) The amount of the survivor annuity payable under
25 this section to the surviving spouse of a deceased
26 participant shall be equal to the excess, if any, of the
27 amount of the survivor annuity which would be payable to the
28 surviving spouse under this section without regard to this
29 subsection over the total amount of the survivor annuity or
30 survivor annuities payable pursuant to section 8434 of this
31 title to an eligible former spouse or eligible former spouses
32 of the deceased former participant. *Former spouse has priority*

33 “§ 8432. Basic plan benefits relating to death of a former
34 participant

079910.046

29

S.I.C.

1 “(a) For the purposes of this section--

2 “(1) the term ‘child’, when used with respect to a
3 deceased former participant, means--

4 “(A) the former participant’s natural child,
5 adopted child, or stepchild who, on the date of the
6 former participant’s death, was living with or was
7 supported, at least in part, by the former
8 participant; and

9 “(B) a child who lived with and for whom a
10 petition of adoption was filed by the former
11 participant and who is adopted by the former
12 participant’s surviving spouse after the former
13 participant died; and

14 “(2) the term ‘deceased former participant’s
15 annuity’ means--

16 “(A) the annuity the deceased former participant
17 was entitled to receive under section 8411 of this
18 title on the date of the former participant’s death;
19 or

20 “(B) in the case of a former participant who
21 died entitled to a deferred annuity under section
22 8412 of this title before payment of the annuity
23 commenced, the annuity the deceased former
24 participant would have been entitled to receive under
25 such section if the deceased former participant had
26 been 62 years of age on the date of death.

27 “(b) (1) Except as provided in paragraph (2) of this
28 subsection, the surviving spouse of a former participant who
29 dies after terminating employment entitled to an immediate or
30 deferred annuity under subchapter II of this chapter shall be
31 entitled to a survivor annuity as provided in subsection (c)
32 of this section.

33 “(2) (A) A survivor annuity shall not be paid to a
34 surviving spouse of a former participant who, jointly with

1 the former participant, waived a survivor annuity under this
2 section as provided in subparagraph (B) of this paragraph.

3 "(B) A waiver for the purposes of subparagraph (A) of
4 this paragraph shall be made in writing on the date payment
5 of an annuity to the former participant commences under
6 subchapter II of this chapter and shall be made in accordance
7 with such regulations as the Office may prescribe.

8 "(c) (1) Except as provided in subsection (d) of this
9 section, the amount of the survivor annuity payable under
10 subsection (b) of this section to a deceased former
11 participant's surviving spouse who is not less than 60 years
12 of age on the date the survivor annuity commences shall be
13 equal to 50 percent of the amount of the deceased former
14 participant's annuity computed pursuant to sections 8413 and
15 8414 of this title without regard to section 8415 of this
16 title.

17 "(2) (A) Except as provided in subsection (d) of this
18 section, the amount of the survivor annuity payable under
19 subsection (b) of this section to a deceased former
20 participant's surviving spouse who is less than 60 years of
21 age on the date the survivor annuity commences shall be
22 computed as provided under subparagraph (B) or (C) of this
23 paragraph, as appropriate.

24 "(B) If there is no surviving child of the deceased
25 former participant who is less than 16 years of age on the
26 date the survivor annuity commences, the amount of the
27 survivor annuity payable to the deceased former participant's
28 surviving spouse shall--

29 "(i) while the surviving spouse is less than 60
30 years of age, be equal to the amount of the deceased
31 former participant's annuity, as computed under sections
32 8413, 8414, and 8415 of this title, adjusted as provided
33 in section 8452 of this title; and

34 "(ii) on and after the date the surviving spouse

1 becomes 60 years of age, shall be equal to the amount
2 computed pursuant to paragraph (1) of this subsection,
3 adjusted as provided in section 8452(c) (3) of this
4 title.

5 "(C) If there is a surviving child of the deceased
6 former participant who is less than 16 years of age on the
7 date the survivor annuity commences, the amount of the
8 survivor annuity payable to the surviving spouse shall be
9 equal to 50 percent of the amount of the deceased former
10 participant's annuity computed under sections 8413 and 8414
11 of this title without regard to section 8415 of this title.

12 "(d) The amount of the survivor annuity payable under
13 this section to the surviving spouse of a deceased former
14 participant shall be equal to the excess, if any, of the
15 amount of the survivor annuity which would be payable to the
16 surviving spouse under this section without regard to this
17 subsection over the total amount of any survivor annuity or
18 survivor annuities payable pursuant to section 8434 of this
19 title to an eligible former spouse or eligible former spouses
20 of the deceased former participant.

21 "§ 8433. Survivor benefits under the thrift savings plan

22 "(a) Except as provided in section 8425 (a) of this
23 title or subsection (c) of this section, the amount in the
24 account established and maintained for a deceased participant
25 or deceased former participant pursuant to section 8428 (a)
26 of this title, determined on the date of distribution under
27 this section, shall, subject to the limits of the entitlement
28 set out in section 8422 (a) (1) of this title (without regard
29 to section 8422 (a) (2) of this title), be paid to--

30 "(1) the surviving spouse of the deceased
31 participant pursuant to the method elected under
32 subsection (b) of this section; or

33 "(2) if there is no surviving spouse, to the estate
34 of the deceased participant.

*why not order of precedence
or desc of beneficiary?*

079910.046

S.I.C.

32

1 “(b) A surviving spouse entitled to payment of benefits
2 under subsection (a) of this section may elect--

3 “(1) to receive an annuity from the Fund payable
4 monthly for life;

5 “(2) to transfer the amount referred to in such
6 subsection to an individual retirement account (within
7 the meaning of the Internal Revenue Code of 1954) of the
8 surviving spouse; or

9 “(3) to withdraw such amount in one payment.

10 “(c) (1) Any amount required for the payment of a
11 survivor annuity with respect to a deceased participant or
12 deceased former participant out of the Thrift Savings Fund
13 pursuant to section 8434 of this title shall be deducted and
14 withheld from a distribution made with respect to the
15 deceased participant or deceased former participant pursuant
16 to subsection (a) of this section. The amount deducted and
17 withheld shall be maintained in the Thrift Savings Fund until
18 expended in payment of the survivor annuity or until the
19 survivor annuity terminates. Any sums remaining from the
20 amount deducted and withheld after the termination of the
21 survivor annuity, plus net earnings realized from investment
22 of such amount, shall be distributed as provided in
23 subsection (a) of this section.

24 “§ 8434. Survivor benefits for eligible former spouses:
25 entitlement; amount

26 “(a) Subject to subsections (b) through (f) of this
27 section, an eligible former spouse of a deceased participant
28 or deceased former participant is entitled to a survivor
29 annuity under this section, if and to the extent that an
30 election under section 8435 of this title or the terms of any
31 court decree dissolving or annulling the marriage of the
32 participant or former participant and the eligible former
33 spouse or any court order or court-approved property
34 settlement agreement incident to such decree expressly

1 provides for such survivor annuity.

2 “(b) (1) The amount of the survivor annuity payable from
3 the Fund to an eligible former spouse of a deceased
4 participant or deceased former participant under this section
5 may not exceed the excess, if any, of--

6 “(A) the amount applicable in the case of such
7 eligible former spouse, as determined under paragraph (2)
8 of this subsection, over

9 “(B) the amount of any survivor annuity payable from
10 the Fund under this section to any other eligible former
11 spouse of the participant or former participant based on
12 an election previously made under section 8435 of this
13 title or a court decree or order previously issued.

14 “(2) (A) For the purposes of paragraph (1) (A) of this
15 subsection, the applicable amount in the case of an eligible
16 former spouse of a deceased participant or deceased former
17 participant is the amount which would be applicable--

18 “(i) under section 8432 (c) of this title (without
19 regard to section 8432 (d) of this title) in the case of
20 a surviving spouse of the deceased, if the deceased was a
21 former participant who died after retirement; or

22 “(ii) under section 8431 (b) (1) of this title
23 (without regard to section 8431 (c) of this title) in the
24 case of a surviving spouse of the deceased, if the
25 deceased was a participant described in section 8431 (a)
26 of this title.

27 “(c) (1) The total amount of all survivor annuities
28 payable from the Thrift Savings Fund to eligible former
29 spouses of a deceased participant or deceased former
30 participant pursuant to this section may not exceed the
31 amount of the survivor annuities that would be payable to the
32 former spouses out of 120 percent of the balance in the
33 account of the deceased participant or deceased former
34 participant, determined in accordance with generally accepted

079910.046

S.I.C.

34

1 actuarial practice and standards.

2 “(2) If more than one eligible former spouse is entitled
3 to a survivor annuity pursuant to this section, the amount of
4 each such survivor annuity shall be limited appropriately to
5 carry out paragraph (1) of this subsection on a first-come,
6 first-served basis determined by reference to the date an
7 election is properly made pursuant to section 8435 of this
8 title or the date the Board properly receives a copy of the
9 court decree, order, or court-approved agreement applicable
10 to the entitlement.

11 “(d) The commencement and termination of a survivor
12 annuity payable under this section to an eligible former
13 spouse of a deceased participant or deceased former
14 participant shall be governed by the terms of the applicable
15 court order, decree, or agreement or an election, as the case
16 may be, except that any such survivor annuity--

17 “(1) shall not commence before--

18 “(A) the day after the participant or former
19 participant dies, or

20 “(B) the first day of the second month beginning
21 after the date on which the Office receives written
22 notice of the court order, decree, or agreement or
23 the election, as the case may be, together with such
24 additional information or documentation as the Office
25 may prescribe,

26 whichever is later, and

27 “(2) shall terminate not later than the last day of
28 the month before the former spouse remarries before
29 becoming 55 years of age or dies.

30 “(e) For the purposes of this section, a modification in
31 a court decree, order, or agreement or an election referred
32 to in subsection (a) of this section shall not be effective--

33 “(1) if such modification is made after the
34 retirement of the participant concerned, and

079910.046

S.I.C.

35

1 “(2) to the extent that such modification involves a
2 survivor annuity under this section.

3 “(f) For the purposes of this section, a court decree,
4 order, or agreement or an election referred to in subsection
5 (a) of this section shall not be effective, in the case of a
6 former spouse, to the extent that it is inconsistent with any
7 joint waiver previously executed with respect to such former
8 spouse under section 8432 (b) (2) of this title.

9 “(g) Any payment under this section to a person bars
10 recovery by any other person.

11 “§ 8435. Survivor benefits for former spouses: elections,
12 deposits and collections, and administrative
13 provisions

14 “(a) (1) A former participant who, on the date that
15 payment of an annuity to the former participant under
16 subchapter II of this chapter commences, has an eligible
17 former spouse may elect, under procedures prescribed by the
18 Office, to provide a survivor annuity for such former spouse
19 under section 8434 of this title. An election under this
20 paragraph shall be made on the date that payment of an
21 annuity under subchapter II of this chapter to the former
22 participant commences or, if later, within two years after
23 the date on which the marriage of the former spouse to the
24 former participant is dissolved or annulled. The election
25 shall specify the amount of the survivor annuity to be
26 provided under this paragraph.

27 “(2) A former participant making an election under
28 paragraph (1) of this subsection during the two-year period
29 referred to in such paragraph shall deposit in the Fund,
30 within such period, an amount determined by the Office, as
31 nearly as may be administratively feasible, to reflect the
32 amount by which the annuity of such former participant would
33 have been reduced if the election had been continuously in
34 effect since the date the annuity commenced, plus interest.

1 “(3) An election under paragraph (1) of this
2 subsection--

3 “(A) shall not be effective to the extent that it
4 conflicts with--

5 “(1) any court decree or order referred to in
6 subsection (a) of section 8434 of this title, which
7 was issued before the date of such election; or

8 “(11) any agreement referred to in such
9 subsection which was entered into before such date;

10 “(B) shall not be effective to the extent that the
11 amount of the annuity specified in the election exceeds--

12 “(1) in the case of a survivor annuity payable
13 from the Fund, the amount determined pursuant to
14 section 8434 (b) of this title; or

15 “(11) in the case of a survivor annuity payable
16 from the Thrift Savings Fund, the amount determined
17 pursuant to section 8434 (c) of this title; and

18 “(C) except as provided in subsection (d) of this
19 section, shall not be effective, in the case of a former
20 participant who is married on the date of the election,
21 unless the election is made with the written consent of
22 the former participant's spouse.

23 “(b) A former participant who has elected to provide a
24 survivor annuity for an eligible former spouse pursuant to
25 subsection (a) of this section may make an election to
26 provide or increase a survivor annuity for any other eligible
27 former spouse of the former participant within the same
28 period that, and subject to the same conditions under which,
29 an election could be made under subsection (c) of this
30 section for a spouse of the former participant (subject to
31 the provisions of subsection (a) (3) (C) of this section
32 relating to the consent of a spouse, if the former
33 participant is then married). The opportunity to make an
34 election under the preceding sentence is in addition to any

1 opportunity otherwise provided under this subsection.

2 “(c) If the entitlement of an eligible former spouse of
3 a former participant to a survivor annuity under this
4 subchapter is terminated or reduced by reason of the
5 remarriage or death of the former spouse, the former
6 participant may elect, in a signed writing received by the
7 Office within two years after the former spouse's date of
8 death or remarriage, to provide a survivor annuity or to
9 increase the survivor annuity for the spouse of the former
10 participant.

11 “(d) (1) If a former participant is married on the date
12 that payment of an annuity under subchapter II of this
13 chapter to the former participant commences, the marriage
14 terminates, and the former participant remarries, the former
15 participant may irrevocably elect during the later marriage
16 to provide an annuity for such former participant's spouse.
17 An election under this subparagraph shall be made in a signed
18 writing received by the Office within two years after the
19 date of the remarriage.

20 “(2) An election under paragraph (1) of this subsection
21 shall be effective the first day of the second month
22 beginning after the election is received by the Office, but
23 not earlier than nine months after the date of the remarriage
24 referred to in such paragraph.

25 “(3) A former participant making an election under
26 paragraph (1) of this subsection shall, within two years
27 after the date of the remarriage referred to in such
28 paragraph, deposit in the Fund an amount determined by the
29 Office, as nearly as may be administratively feasible, to
30 reflect the amount by which the annuity of such former
31 participant would have been reduced if the election had been
32 in effect since the date that payment of an annuity to the
33 former participant under subchapter II of this chapter
34 commenced or, if later, the date the previous reduction in

079917.246

S.I.C.

38

1 such former participant's annuity was terminated under
2 section 8415 (b) or 8415 (c) of this title, plus interest.

3 "(4) Notwithstanding any other provision of this
4 paragraph, an election under this subsection may not be made
5 for the purpose of providing a survivor annuity to a spouse
6 of a former participant by remarriage if--

7 "(A) such spouse was married to the former
8 participant on the date that payment of an annuity to the
9 former participant under subchapter II of this chapter
10 commenced; and

11 "(B) all rights to survivor benefits for such spouse
12 under this subchapter based on marriage to such former
13 participant were then waived under section 8432 (b) (2)
14 of this title.

15 "(e) For the purposes of subsection (a) (2) or (d) (3)
16 of this section, the annual rate of interest for each year
17 during which an annuity would have been reduced if the
18 election referred to in such subsection had been in effect on
19 and after the applicable date referred to in such subsection
20 shall be six percent.

21 "(f) If a former participant does not make a deposit
22 required by subsection (a) (2) or (d) (3) of this section,
23 the Office shall collect such amount by offset against the
24 former participant's annuity payable from the Fund, up to a
25 maximum of 25 percent of the net annuity otherwise payable to
26 the former participant. The former participant is deemed to
27 consent to such offset.

28 "(g) The Office may extend the time limit for making a
29 deposit required by subsection (a) (2) or (d) (3) of this
30 section in any case for good cause shown.

31 "(h) Any requirement that the spouse of a participant or
32 former participant waive a right to a survivor annuity under
33 this subchapter as a condition for an election authorized by
34 this section shall not apply if the participant or former

079910.046

S.I.C.

39

1 participant establishes to the satisfaction of the Office
2 that--

3 "(1) the spouse's whereabouts cannot reasonably be
4 determined; or

5 "(2) due to exceptional circumstances, it would be
6 inappropriate to require the participant or former
7 participant to obtain the spouse's consent.

no guidelines

8 "§ 8436. Termination of entitlement

9 "(a) An election of a former participant to provide a
10 survivor annuity to the former participant's spouse under
11 this subchapter terminates on the first day of the first
12 month beginning after--

13 "(1) the date of the death of the spouse; or

14 "(2) the date of the dissolution of the spouse's
15 marriage to the former participant.

16 "(b) The entitlement of an eligible former spouse of a
17 former participant to a survivor annuity under section 8434
18 (a) of this title terminates on the first day of the first
19 month beginning after--

20 "(1) the date of the death of the former spouse; or

21 "(2) the date the former spouse remarries before
22 becoming 55 years of age.

23 "SUBCHAPTER V--DISABILITY BENEFITS

24 "§ 8441. Definitions

25 "For the purposes of this subchapter--

26 "(1) the term 'disability benefits under the Social
27 Security Act' means disability insurance benefits payable
28 under section 223 of the Social Security Act or benefits
29 payable under section 202 of such Act by reason of being
30 under a disability;

31 "(2) the term 'disabled', when used with respect to
32 an eligible participant, means that the eligible
33 participant--

34 "(A) is under a disability within the meaning of

079910.046

S.I.C.

40

1 section 223 of the Social Security Act; or

2 "(B) is unable, because of disease or injury, to
3 render useful and efficient service in the
4 participant's position and (except in the case of a
5 Member) is not qualified for reassignment, under
6 procedures prescribed by the Office, to a vacant
7 position--

8 "(1) which is in the participant's employing
9 agency;

10 "(11) which is in a grade (or pay level) not
11 lower than two grades (or pay levels) below the
12 grade (or pay level) of the participant's
13 position; and

14 "(111) in which the participant would be
15 able to render useful and efficient service;

16 "(3) the term 'eligible participant' means a
17 participant whose service exceeds eighteen months and--

18 "(A) who--

19 "(1) has applied for disability benefits
20 under the Social Security Act and has been
21 determined to be under a disability for the
22 purposes of title II of the Social Security Act;
23 or

24 "(11) in the case of a participant who is
25 not entitled to disability benefits under the
26 Social Security Act by reason of insufficient
27 quarters of coverage, has been determined by the
28 Office to be disabled within the meaning of
29 paragraph (1) (A) of this section on the basis of
30 a report of examination required by section 8445
31 of this title; or

32 "(3) who has been determined by the Office to be
33 disabled within the meaning of paragraph (2) (B) of
34 the section on the basis of a report of examination

079910.246

41

S.I.C.

required by section 8445 of this title;

“(4) the term ‘onset average pay’, when used with respect to a disabled eligible participant, means the participant’s average pay on the date of onset of the disability; and

*why not
or commencing
date of annuity?*

“(5) the term ‘projected service’, when used with respect to a disabled eligible participant, means the sum of the number of years of service performed by the participant before the onset of the disability and the number of years, if any, after the date of the onset of the disability and before the date the participant becomes 62 years of age.

*actual service
increased by the
year to age 62*

“§ 8442. Entitlement

“(a) An eligible participant who is disabled is entitled to receive disability benefits under this subchapter while under 62 years of age.

“(b) (1) An eligible participant who is disabled, is not less than 62 years of age, and has ten years or more of projected service shall be entitled to an annuity as provided in subchapter II of this title.

“(2) For the purposes of applying the provisions of subchapter II of this title in the case of an eligible participant pursuant to paragraph (1) of this subsection--

“(A) the eligible participant shall be deemed to have separated from employment by the Government at 62 years of age;

“(B) the service of the participant shall be deemed to be equal to the participant’s projected service; and

“(C) the participant’s average pay shall be equal to the participant’s onset average pay, increased each time after the date of onset of the participant’s disability that the rates of pay under the General Schedule are increased pursuant to section 5325 of this title, by the same overall average percent of the increase in such

*Could be stated
more directly as increasing
the annuity.*

*This is a re-computation of
the annuity for the year*

079910.046

S.I.C.

42

1 rates, and compounded.

2 ``§ 8443. Computation of benefits

3 `` (a) The annual rate of the disability benefits

4 initially payable under section 8442 (a) of this title to an

5 eligible participant referred to in section 8441 (3) (A) of

6 this title shall be equal to the excess of 60 percent of the

7 participant's onset average pay over the amount, if any,

8 payable to the participant as disability benefits under the

9 Social Security Act. Such annual rate shall be adjusted as

10 provided in section 8452 of this title.

11 `` (b) The annual rate of the disability benefits payable

12 under section 8442 (a) of this title to an eligible

13 participant referred to in section 8441 (3) (B) of this

14 title--

15 `` (1) during the period ending one year after the

16 date of onset of the disability, shall be equal to 60

17 percent of the participant's onset average pay; and

18 `` (2) after such period, shall be equal to the lesser

19 of--

20 `` (A) 20 percent of the onset average pay

21 increased by the same percent as the overall percent

22 increase, if any, taking effect in the rates of pay

23 under the General Schedule pursuant to section 5305

24 of this title between the effective date of the

25 annual rate computed pursuant to paragraph (1) of

26 this subsection and the effective date of the annual

27 rate computed under this paragraph; or

28 `` (B) the amount the participant would be

29 entitled to receive under section 8442 (b) of this

30 title if the eligible participant were 62 years of

31 age.

32 ``§ 8444. Application

33 `` (a) Except as provided in subsection (b) of this

34 section, a claim of a participant for disability benefits

079910.046

S.I.C.

43

1 under this subchapter may be allowed only if the participant
2 files with the Office an application for the disability
3 benefits within one year after the date of the onset of the
4 disability.

*what about
a disease that
becomes
disabling
5 years after
onset*

5 "(b) The Office may waive the time limitation set out in
6 subsection (a) of this section in the case of a participant
7 if--

8 "(1) the Office determines that the participant was
9 mentally incompetent on the date of the onset of the
10 participant's disability or within one year after such
11 date; and

12 "(2) the application for disability benefits is
13 filed within one year after the date the participant is
14 restored to mental competency or the date a fiduciary is
15 appointed to manage the financial affairs of the
16 participant, whichever date is earlier.

17 "§ 8445. Medical examinations

18 "(a) A participant applying for disability benefits
19 under section 8442 (a) of this title shall be examined by a
20 physician under the direction of the Office at such times as
21 the Office may require.

*How about
one receiving
dis. benefit?
How about
other evidence
available?*

22 "(b) A physician examining a participant under
23 subsection (a) of this section shall report to the Office the
24 diagnosis and prognosis with respect to such participant.

25 "(c) Notwithstanding any other provision of this
26 subchapter, any participant who fails to submit to the
27 examination required under subsection (a) of this section
28 shall not be entitled to disability benefits.

29 "§ 8446. Offers of alternative employment

30 "(a) Any participant who is applying for disability
31 benefits under this subchapter, is examined pursuant to
32 section 8445 of this title, and is determined on the basis of
33 the examination to be able to perform the work required in
34 any position in the participant's employing agency shall be

079910.046

S.I.C.

44

1 considered for appointment to such position.

2 “(b) Any participant who is appointed to or offered a
3 position under subsection (a) of this section is entitled to
4 appeal to the Merit Systems Protection Board under section
5 7701 of this title any determination that the participant is
6 able to perform the work required of such position.

7 “§ 8447. Recovery or restoration of earning capacity

8 “(a) (1) If the office determines that an individual who
9 is receiving disability benefits under this subchapter has
10 recovered from the disability before becoming 62 years of
11 age, payment of the benefits shall terminate on the date the
12 individual is reemployed by the Government or one year after
13 the date of the medical examination on which the Office's
14 determination is based, whichever date is earlier.

15 “(2) Except as provided in subsection (c) (2) of this
16 section, payment of disability benefits under this chapter
17 that has been terminated pursuant to paragraph (1) of this
18 subsection in the case of any individual shall be resumed if
19 there is a recurrence of the individual's disability, as
20 determined by the Office after a medical examination of the
21 individual. The resumption of payment of disability benefits
22 shall be effective on the date such medical examination was
23 completed. The annual rate of the disability benefits payable
24 to the individual upon resumption of payment shall be the
25 annual rate that would have been payable to the individual if
26 payment of disability benefits had not been terminated
27 pursuant to paragraph (1) of this subsection.

28 “(b) (1) If the Office determines that an individual who
29 is receiving disability benefits under this subchapter has
30 received, during the latest calendar year, income from wages
31 or self-employment or both totalling the amount equal to 80
32 percent of the rate of pay payable for the individual's
33 position of employment by the Government on the date of the
34 onset of the individual's disability (increased as if such

1 rate of pay had been increased, by the same percent as the
2 overall percent increase in the rates of pay under the
3 General Schedule, each time such rates had been increased
4 pursuant to section 5305 of this title since such date.)
5 payment of the benefits shall terminate on the date 182 days
6 after the end of such calendar year.

7 "(2) Except as provided in subsection (c) (2) of this
8 section, if payment of disability benefits under this
9 subchapter has been terminated pursuant to paragraph (1) of
10 this subsection in the case of an individual who is not
11 reemployed in a position subject to this chapter, continues
12 to be disabled, and receives in the calendar year in which
13 the disability benefits were terminated, or any calendar year
14 after such year, income from wages or self-employment or both
15 totalling less than the amount computed in such case as
16 provided in such paragraph, payment of disability benefits to
17 the individual under this subchapter shall be resumed. The
18 resumption of payment of disability benefits shall be
19 effective the first day of the first year beginning after the
20 year in which the individual received the income referred to
21 in the first sentence. The annual rate of the disability
22 benefits payable to the individual upon resumption of payment
23 shall be the annual rate that would have been payable to the
24 individual if payment had not been terminated pursuant to
25 paragraph (1) of this subsection.

26 "§ 8448. Relationship to workers' compensation

27 "(a) (1) An individual is not entitled to receive
28 disability benefits under this subchapter and compensation
29 for injury or disability to the individual under subchapter J
30 of chapter 81 of this title covering the same period of time.

31 "(2) Paragraph (1) of this subsection does not bar the
32 right of a claimant to the greater benefit conferred by
33 either subchapter referred to in such paragraph for any part
34 of the period referred to in such paragraph.

079910.046

S.I.C.

46

1 “(3) Paragraph (1) of this subsection and the provisions
2 of subchapter I of chapter 81 of this title do not deny an
3 individual an annuity accruing to the individual under this
4 chapter on account of service performed by the individual and
5 do not deny any concurrent benefit to the individual under
6 subchapter I of chapter 81 of this title on account of the
7 death of another individual.

8 “(b) (1) Subject to paragraph (2) of this subsection, an
9 individual's receipt of a lump-sum payment for compensation
10 under section 8135 of this title shall not affect to
11 individual's entitlement to disability benefits under this
12 subchapter.

13 “(2) If disability benefits are payable under this
14 subchapter by reason of the same disability for which a lump-
15 sum payment of compensation referred to in paragraph (1) of
16 this subsection has been made, so much of the compensation as
17 has been paid for a period extended beyond the date payment
18 of the disability benefits commences, as determined by the
19 Department of Labor, shall be refunded to that Department for
20 credit to the Employees' Compensation Fund. Before the
21 individual may receive the disability benefits, the
22 individual shall--

23 “(A) refund to the Department of Labor the amount
24 representing the commuted compensation payments for the
25 extended period; or

26 “(B) authorize the deduction of the amount from the
27 disability benefits.

28 Deductions from the disability benefits may be made from
29 accrued or accruing payments. The amounts deducted and
30 withheld from disability benefits shall be transmitted to the
31 Department of Labor for reimbursement to the Employees'
32 Compensation Fund. When the Department of Labor finds that
33 the financial circumstances of an individual entitled to
34 disability benefits under this subchapter warrant deferred

079910.045

S.I.C.

47

1 refunding under this paragraph, deductions from the
2 disability benefits may be prorated against and paid from
3 accruing payments in such manner as the Department
4 determines.

5 ``§ 8449. National Guard technicians

6 `` (a) For the purposes of this section, the term
7 'technician' means an individual employed under section 709
8 (a) of title 32 who, as a condition of the employment, is
9 required under section 709 (b) of such title to be a member
10 of the National Guard and to hold a specified military grade.

11 `` (b) (1) Except as provided in paragraph (2) of this
12 subsection, a participant shall be entitled to disability
13 benefits under this subchapter in the same manner as an
14 eligible participant (as defined in section 8441 (3) (B) of
15 this title) if the participant--

16 `` (A) is separated from employment as a technician
17 under section 709 (e) (1) of title 32 by reason of a
18 disability that disqualifies the individual from
19 membership in the National Guard or from holding the
20 military grade required for such employment:

21 `` (B) is not considered disabled;

22 `` (C) is not appointed to another position in the
23 Government (under subsection (c) of this section or
24 otherwise); and

25 `` (D) has not declined an offer to a position in the
26 Government under subsection (c) of this section.

27 `` (2) Payment of disability benefits to an individual
28 under this section terminates--

29 `` (A) on the date the individual is appointed to a
30 position in the Government (under subsection (c) of this
31 section or otherwise);

32 `` (B) on the date the individual declines an offer of
33 appointment to a position in the Government pursuant to
34 subsection (c) of this section; or

879910.246

48

S.I.C.

1 “(C) as provided in section 8447 (a) or 8447 (b) of
2 this title.

3 “(c) Any individual applying for or receiving disability
4 benefits pursuant to this section shall, in accordance with
5 regulations prescribed by the Office, be considered by any
6 agency of the Government before any vacant position in the
7 agency is filled if--

8 “(1) the position is located within the commuting
9 area of the individual's former position;

10 “(2) the individual is qualified to serve in the
11 vacant position; and

12 “(3) the position is at the same grade or equivalent
13 level as the position from which the individual was
14 separated under section 709 (e) (1) of title 32.

15 “§ 8450. Funding

16 “Disability benefits payable to a participant under
17 section 8442 (a) of this title shall be paid by the employing
18 agency from the appropriation or fund available for payment
19 of the basic pay or salaries of employees of the agency. In
20 the case of a participant in the legislative branch who was
21 paid by the Clerk of the House on the date of onset of the
22 disability, disability benefits payable to the participant
23 shall be paid from the contingent fund of the House of
24 Representatives.

25 “SUBCHAPTER VI--GENERAL AND ADMINISTRATIVE PROVISIONS

26 “§ 8451. Responsibilities

27 ““The Office shall pay all benefits that are payable
28 under subchapter II of this chapter from the Fund.

29 “§ 8452. Cost-of-living adjustment in basic plan annuities,
30 survivor annuities, and disability benefits

31 “(a) For the purpose of this section--

32 “(1) the term ‘base quarter’, when used with respect
33 to a year, means the calendar quarter ending on September
34 30, of such year; and

079910.046

49

S.I.C.

1 “(2) the price index for a base quarter is the
2 arithmetical mean of such index for the three months
3 comprising such quarter.

4 “(b) Except as provided in subsection (c) or (e) of this
5 section, effective December 1 of each year, each annuity
6 payable from the Fund under subchapter II of this chapter or
7 section 8431 or 8432 of this title, and each disability
8 benefit payable under section 8442 (a) of this title, and
9 having a commencing date not later than such December 1 shall
10 be increased by the percentage equal to the excess of--

11 “(1) the percent increase, if any, in the price
12 index for the base quarter of such year over the price
13 index for the base quarter of the latest preceding year
14 in which an increase was made under this subsection in
15 annuities under such subchapter, over

16 “(2) two percent,
17 adjusted to the nearest one-tenth of one percent.

18 “(c) (1) The first increase (if any) made under
19 subsection (b) of this section to an annuity payable to a
20 participant who retires, to the surviving spouse of a
21 deceased participant, or to the surviving spouse of a
22 deceased annuitant whose annuity has never been increased
23 under this subsection or subsection (b) of this section, and
24 the first increase (if any) made under such subsection to a
25 disability benefit that is referred to in such subsection and
26 is payable to a participant, shall be equal to the product
27 (adjusted to the nearest one-tenth of one percent) of--

28 “(A) one-twelfth of the applicable percentage of the
29 adjustment computed under subsection (b) of this section,
30 multiplied by

31 “(B) (1) the number of months (counting any portion
32 of a month as a month) for which the annuity or
33 disability benefit was payable before the effective date
34 of the increase, or

Cola
disability
benefits
also increased
under
8442 (b)(2)(c)

079910.046

S.I.C.

50

1 “(11) In the case of a survivor annuity payable to a
2 surviving spouse of a deceased annuitant whose annuity
3 has never been so increased, the number of months
4 (counting any portion of a month as a month) since the
5 annuity was first payable to the deceased annuitant.

6 “(2) Effective on its commencing date, an annuity
7 referred to in subsection (b) of this section and payable to
8 an annuitant's surviving spouse shall be increased by the
9 total percent by which the deceased annuitant's annuity had
10 been increased under this section during the period beginning
11 on the date the deceased annuitant's annuity commenced and
12 ending on the date of the deceased annuitant's death.

13 “(3) Effective on the date a survivor annuity computed
14 under clause (1) of section 8432 (c) (2) (P) of this title is
15 adjusted pursuant to clause (11) of such section 8432 (c) (2)
16 (B), the survivor annuity shall be increased by the total
17 percent by which the survivor annuity had been increased
18 under this section before the date the adjustment is made
19 pursuant to such clause (11).

20 “(d) The monthly installment of an annuity or disability
21 benefit payable after adjustment under this section shall be
22 rounded to the next lowest dollar, but the increase in the
23 monthly installment under this section shall be at least one
24 dollar.

25 “§ 8453. Rate of benefits

26 “Each annuity and disability benefit is stated as an
27 annual amount, one-twelfth of which, fixed at the nearest
28 dollar, constitutes the monthly rate payable on the first
29 business day of the first month beginning not less than one
30 month after the last day of the month for which the annuity
31 or disability benefit has accrued.

32 “§ 8454. Accrual and termination of annuities

33 “(a) (1) Except as otherwise provided in this
34 subchapter, the annuity of a participant under subchapter II

*always
one month
behind?
Annuity
accruing for
January
payable
March?*

879910.245

S.I.C.

51

1 of this chapter commences to accrue on the day after--

2 "(A) the participant separates from employment by
3 the Government entitled to an immediate annuity under
4 section 8411 of this title, or

5 "(B) the date a participant referred to in section
6 8412 of this title becomes 62 years of age,
7 as the case may be.

8 "(2) The annuity of a former participant under this
9 chapter terminates on the date of death or other terminating
10 event provided by law.

11 "(b) (1) The survivor annuity of an individual entitled
12 to a survivor annuity under this chapter commences to accrue
13 on the date of death of the deceased participant or former
14 participant on whose death such annuity is based.

15 "(2) The survivor annuity payable to a surviving spouse
16 or an eligible former spouse of a deceased participant or
17 deceased former participant under this chapter terminates on
18 the last day of the last month ending before the surviving
19 spouse or former spouse dies or, if the surviving spouse or
20 former spouse is less than 55 years of age, remarries.

21 "\$ 8455. Waiver, allotment, and assignment of benefits

22 "(a) An individual entitled to receive payment of
23 benefits under subchapter II of this chapter may decline to
24 accept all or any part of the amount of the benefits by a
25 waiver signed and filed with the Office. The waiver may be
26 revoked in writing at any time. Payment of the benefits
27 waived may not be made for the period during which the waiver
28 is in effect.

29 "(b) An individual entitled to receive payment of
30 benefits under subchapter II of this chapter may make
31 allotments or assignments of amounts from the benefits for
32 such purposes as the Office considers appropriate.

33 "\$ 8456. Application for benefits

34 "(a) No payment of benefits based on the service of a

*Annuity to
payable to
annuitant
and to
survivor
for date of
death?*

Why?

079910.046

S.I.C.

52

1 former participant shall be made under subchapter II of this
 2 chapter unless an application for payment of the benefits is
 3 received by the Office before the one hundred and fifteenth
 4 anniversary of the former participant's birth.

5 "(b) Notwithstanding subsection (a) of this section,
 6 after the death of a participant or former participant, a
 7 benefit based on the participant's or annuitant's service
 8 shall not be paid under subchapter II of this chapter unless
 9 an application therefor is received by the Office within
 10 thirty years after the death or other event which establishes
 11 the entitlement to the benefit.

12 "\$ 8457. Court orders

13 "(a) Payments under this chapter which would otherwise
 14 be made to a participant or former participant based upon the
 15 service of the participant or former participant shall be
 16 paid (in whole or in part) by the Office or the Board, as the
 17 case may be, to another person if and to the extent that the
 18 terms of any court decree of divorce, annulment, or legal
 19 separation, or the terms of any court order or court-approved
 20 property settlement agreement incident to any court decree of
 21 divorce, annulment, or legal separation expressly provide.
 22 Any payment under this paragraph to a person bars recovery by
 23 any other person.

24 "(b) Subsection (a) of this section shall apply only to
 25 payments made by the Office or the Board under this chapter
 26 after the date the Office or the Board, as the case may be,
 27 receives written notice of such decree, order, or agreement,
 28 and such additional information and documentation as the
 29 Office or the Board may require.

30 "\$ 8458. Annuities and pay on reemployment

31 "(a) If a former participant receiving an annuity under
 32 this chapter becomes employed in an appointive or elective
 33 position in the Government, payment of the annuity terminates
 34 effective on the date of the employment and the former

*Office
may deny
benefits
by delay.*

*Admin
nightmare.*

*Temp
appts?
overpayments
intermittent
employment?*

079912.046

53

S.I.C.

1 participant's service on and after the date the former
2 participant becomes so employed is covered by this chapter.
3 Upon termination of the employment, the rights of the former
4 participant under this chapter shall be redetermined. If the
5 former participant dies while still so employed, a survivor
6 annuity payable with respect to the deceased former
7 participant shall be redetermined as if the employment had
8 otherwise terminated on the date of death.

9 "(b) The amount of an annuity resulting from a
10 redetermination of rights under this chapter pursuant to
11 subsection (a) of this section shall not be less than the
12 amount of the terminated annuity plus any increases under
13 section 8452 of this title occurring after the termination of
14 the annuity and before the commencement of the redetermined
15 annuity.

16 "SUBCHAPTER VII--TRANSITION PROVISIONS

17 "\$ 8471. Elections

18 "(a) Any individual who was subject to subchapter III of
19 chapter 83 of this title as an employee (as defined in
20 section 8331 (1) of this title) or a Member (as defined in
21 section 8331 (2) of this title) on December 31, 1983, and is
22 not required by section 8402 of this title to be a
23 participant may elect, not later than one year after the
24 effective date of the Civil Service Pension Reform Act of
25 1985--

26 "(1) to transfer to the System; or

27 "(2) to commence participation in the System and
28 retain accrued credit for entitlement to benefits under
29 such subchapter for service performed subject to such
30 subchapter.

31 "(b) An election under subsection (a) of this section
32 shall be made in writing pursuant to such regulations as the
33 Office may prescribe.

34 "\$ 8472. Transfer participants

079910.046

S.I.C.

54

1 “(a) (1) The amount computed pursuant to paragraph (2)
2 of this subsection shall be transferred from the Fund to the
3 Thrift Savings Fund in the case of an individual electing to
4 transfer to the System under section 8471 (a) (1) of this
5 title. The amount shall be credited to an account established
6 for the individual pursuant to section 8428 (a) (1) of this
7 title.

8 “(2) The amount transferred from the Fund in the case of
9 an individual pursuant to paragraph (1) of this subsection
10 shall be equal to the sum of--

11 “(A) the lump-sum credit of the individual (other
12 than interest computed pursuant to section 8331 (8) (C)
13 of this title);

14 “(B) the total amount contributed by the employing
15 agency and deposited to the credit of the Fund with
16 respect to the individual pursuant to the second sentence
17 of section 8334 (a) (1) of this title (or any similar
18 prior provision of law); and

19 “(C) interest on the amounts referred to in
20 subparagraphs (A) and (B) of this paragraph as if
21 interest had been credited to the Fund at the end of each
22 fiscal year at an annual rate of seven percent of the
23 total of such amounts that had been deposited to the Fund
24 with respect to such individual in such fiscal year and
25 all prior fiscal years and had been compounded. *annually*

26 “(3) For the purposes of section 8422 of this title--

27 “(A) the amount computed pursuant to paragraph (2)
28 (A) of this subsection and the interest on such amount,
29 computed pursuant to paragraph (2) (C) of this
30 subsection, shall be treated as a contribution made under
31 section 8421 (a) of this title; and *employee contribution*

32 “(B) the amount computed pursuant to paragraph (2)
33 (B) of this subsection and the interest on such amount,
34 computed pursuant to paragraph (2) (C) of this

1 subsection, shall be treated as a contribution made under
2 section 8421 (b) of this title.

3 "(4) All amounts transferred from the Fund pursuant to
4 paragraph (1) of this subsection shall be transferred in the
5 form of interest-bearing securities of the United States
6 Government.

7 "(b) The service that is credited for the purposes of
8 subchapter III of chapter 83 of this title in the case of an
9 individual electing to transfer to the System under section
10 8471 (a) (1) of this title and is covered by deposits made
11 pursuant to section 8334 of this title (or any prior
12 provision of law) or is described in section 8334 (g) of this
13 title shall be considered--

14 "(1) creditable service for the purposes of this
15 chapter; and

16 "(2) years of participation in the System for the
17 purposes of section 8422 (b) (1) of this title.

18 "(c) In the case of an individual referred to in
19 subsection (b) of this section, the basic pay of the
20 individual for employment as an employee (as defined in
21 section 8331 (1) of this title) or a Member (as defined in
22 section 8331 (1) of this title) shall be taken into account
23 in computing the individual's average pay for the purposes of
24 section 8413 (a) of this title.

25 "§ 8473. Participants retaining entitlement in the Civil
26 Service Retirement (and Disability) System

27 "(a) Service that is creditable under subchapter III of
28 chapter 83 of this title in the case of an individual
29 electing to commence participation in the System under
30 section 8471 (a) (2) of this title shall be credited as
31 service under this chapter only for the purpose of
32 determining eligibility to retire entitled to an immediate
33 annuity under section 8411 of this title.

34 "(b) (1) Service performed as a participant in the

079912.246

S.I.C.

56

1 System by an individual referred to in subsection (a) of this
2 section shall be credited under subchapter III of chapter 83
3 of this title only for the purpose of determining eligibility
4 to retire entitled to an immediate annuity under section 8335
5 or 8336 of this title.

6 “(2) (A) The rates of basic pay in effect for an
7 individual referred to in subsection (a) of this section on
8 and after the date the individual begins to participate in
9 the System shall be taken into account in computing the
10 individual's average pay (as defined in section 8331 (4) of
11 this title) for the purposes of subchapter III of chapter 83
12 of this title.

13 “(B) The rates of basic pay in effect for an individual
14 referred to in subsection (a) of this section before the date
15 the individual begins to participate in the System shall be
16 taken into account in computing the individual's average pay
17 for the purposes of this chapter.

18 “§ 8474. Participants hired during temporary adjustment
19 period

20 “(a) If a participant first commenced service as an
21 employee or Member after December 31, 1983, and before the
22 effective date of the Civil Service Pension Reform Act of
23 1985, and the service is employment for the purposes of title
24 II of the Social Security Act and chapter 21 of the Internal
25 Revenue Code of 1954, such service shall be credited as
26 service for the purposes of this chapter and shall be
27 considered years of participation in the System for the
28 purposes of section 8422 (b) (1) of this title.

29 “(b) (1) The amount computed under paragraph (2) of this
30 subsection shall be transferred from the Fund to the Thrift
31 Savings Fund in the case of a participant referred to in
32 subsection (a) of this section. The amount transferred shall
33 be credited to an account established for the individual
34 pursuant to section 8428 (a) of this title.

P79912.046

S.I.C.

57

1 “(2) (A) The amount transferred from the Fund in the
2 case of a participant pursuant to paragraph (1) of this
3 subsection shall be equal to the sum of--

4 “(1) three times the total amount deducted and
5 withheld from the basic pay of the participant pursuant
6 to section 204 (a) of the Federal Employee's Retirement
7 Contribution Temporary Adjustment Act of 1983 (97 Stat.
8 1107; 5 U.S.C. 8331 note); and

9 “(11) interest on the amount referred to in clause
10 (1) of this subparagraph computed at the annual rate of
11 ten percent and compounded annually, as if a fraction of
12 such amount (determined as provided in subparagraph (B)
13 of this paragraph) had been deposited to the credit of
14 the Fund at the end of each month for which amounts were
15 deducted and withheld from the basic pay of the
16 participant as described in clause (1) of this
17 subparagraph.

10%?
equal
fraction?
OK
see below

18 “(B) In the case of any participant to whom paragraph
19 (1) of this subsection applies--

20 “(1) the numerator of the fraction referred to in
21 subparagraph (A) (11) of this paragraph is one; and

22 “(11) the denominator of the fraction is the number
23 of months for which amounts were deducted and withheld
24 from the basic pay of the participant as described in
25 subparagraph (A) (1) of this paragraph.

26 “(3) For the purposes of section 8422 of this title--

27 “(A) one-third of the amount computed in the case of
28 a participant referred to in subsection (a) of this
29 section pursuant to paragraph (2) of this subsection
30 shall be treated as a contribution made under section
31 8421 (a) of this title; and

32 “(B) two-thirds of such amount shall be treated as a
33 contribution made by the employing agency of the
34 participant pursuant to section 8421 (b) of this title.

1 “(4) All amounts transferred from the Fund pursuant to
2 paragraph (1) of this subsection shall be transferred in the
3 form of interest-bearing securities of the United States. *inserted in*

4 “§ 8475. Exemption from offset provision of the Social
5 Security Act

6 “Section 215 (a) (7) of the Social Security Act shall
7 not apply in the case of a person making an election to
8 become a participant in the System pursuant to section 8471
9 (a) of this title.

10 “SUBCHAPTER VIII--CIVIL SERVICE THRIFT INVESTMENT BOARD

11 “§ 8491. Establishment; membership

12 “(a) There is established as an independent
13 establishment in the executive branch of the Federal
14 Government a Civil Service Thrift Investment Board.

15 “(b) The Board shall be composed of--

16 “(1) six members appointed by the President, by and
17 with the advice and consent of the Senate; and

18 “(2) an Executive Director appointed by a majority
19 of the members appointed under paragraph (1) of this
20 subsection.

21 The Executive Director shall have substantial experience,
22 training, or expertise in the management of financial
23 investments. *The six members can be political hacks.*

24 “(c) (1) (A) Except as provided in subparagraph (E) of
25 this paragraph the term of office of each member of the Board
26 appointed under subsection (b) (1) of this section shall be
27 seven years.

28 “(B) Of the members of the Board first appointed under
29 subsection (b) (1) of this section--

30 “(i) one member shall be appointed for a term of one
31 year;

32 “(ii) one member shall be appointed for a term of
33 two years;

34 “(iii) one member shall be appointed for a term of

079910.046

S.I.C.

59

1 three years;

2 "(iv) one member shall be appointed for a term of
3 four years;

4 "(v) one member shall be appointed for a term of
5 five years; and

6 "(vi) one member shall be appointed for a term of
7 six years.

8 "(2) Any member appointed under subsection (b) (1) of
9 this section to fill a vacancy occurring before the
10 expiration of the term for which his predecessor was
11 appointed shall be appointed for the remainder of such term.

12 "(d) The Executive Director shall serve for seven years
13 after the date of appointment unless removed earlier by the
14 Board under section 8493 (a) (3) (C) of this title.

15 "§ 8492. Functions

16 "(a) In addition to performing such functions, duties,
17 and responsibilities as are required under subchapter III of
18 this chapter, the Board shall--

19 "(1) establish policy and prescribe regulations for
20 the management of the Thrift Savings Fund and for the
21 administration of subchapter III of this title;

22 "(2) designate the general types of investments to
23 be made with sums in the Thrift Savings Fund;

24 "(3) review the performance of investments made for
25 the Thrift Savings Fund;

26 "(4) without regard to civil service and
27 classification laws, fix the rate of pay for the
28 Executive Director;

29 "(5) supervise the Executive Director; and

30 "(6) review and approve the budget of the Board.

31 "(b) The Executive Director shall--

32 "(1) be the executive officer of the Board;

33 "(2) preside at the meetings of the Board;

34 "(3) manage the Thrift Savings Fund;

879918.246

S.I.C.

68

1 “(4) pay annuities and other distributions from the
2 Thrift Savings Fund under this chapter; and

3 “(5) administer the provisions of this subchapter
4 and subchapter III of this chapter and the regulations
5 prescribed by the Board.

6 “§ 8493. Powers of the Board

7 “(a) The Board may--

8 “(1) adopt, alter, and use a seal;

9 “(2) adopt, amend, and repeal regulations to carry
10 out its functions;

11 “(3) upon the concurring votes of four members--

12 “(A) disapprove any action of the Executive
13 Director under section 8494 of this title;

14 “(B) except as provided in subsection (b) of
15 this section, direct the Executive Director to take
16 such action as the Board considers appropriate to
17 carry out the provisions of this chapter and the
18 policies of the Board; and

19 “(C) remove the Executive Director from office
20 for good cause shown; and

21 “(4) take such other action as may be necessary to
22 carry out the functions of the Board.

23 “(b) The Board may not direct the Executive Director--

24 “(1) to invest or to cause to be invested any sums
25 of the Fund in a specific asset; or

26 “(2) to enter into a contract under section 8494 (a)
27 (3) of this title with a specific private business
28 concern.

29 “§ 8494. Powers of the Executive Director

30 “(a) Subject to section 8493 of this title, the
31 Executive Director, may--

32 “(1) call meetings of the Board;

33 “(2) without regard to civil service and
34 classification laws, appoint, employ, and fix the

079910.046

61

S.I.C.

1 compensation of such personnel as may be necessary to
2 carry out the provisions of this subchapter and
3 subchapter III of this chapter;

4 "(3) subject to subsection (b) of this section, and
5 subject to the approval of the Board, enter into
6 contracts with private business concerns, without regard
7 to the provisions of title III of the Federal Property
8 and Administrative Services Act of 1949 (41 U.S.C. 251 et
9 seq.), to invest sums in the Thrift Savings Fund and to
10 manage such investments;

11 "(4) enter into such other contracts or other
12 arrangements or modifications thereof, as may be
13 necessary to carry out the provisions of this subchapter
14 and section 8427 of this title and the policies of the
15 Board;

16 T-1 (5) obtain from any Federal agency, including any
17 independent establishment or instrumentality of the
18 United States, advice, information, estimates,
19 statistics, and such other assistance as the Executive
20 Director considers necessary to carry out the provisions
21 of this subchapter and suchapter III of this chapter and
22 the policies of the Board;

23 "(6) make such expenditures from the Thrift Savings
24 Fund as the Executive Director determines are necessary
25 to carry out the provisions of this subchapter and
26 subchapter III of this chapter and the policies of the
27 Board;

28 "(7) pay the compensation, per diem, and travel
29 expenses of personnel from the Fund;

30 "(8) accept and utilize the services of individuals
31 employed intermittently in the Government service and
32 reimburse such individuals for travel expenses, as
33 authorized by section 5723 of title 5, United States
34 Code, including per diem as authorized by section 5722 of

279910.746

S.I.C.

62

1 such title;

2 ``(9) except as otherwise expressly prohibited by law
3 or the policies of the Board, delegate any of his or her
4 functions to such officers and employees under the Board
5 as the Executive Director may designate and authorize
6 such successive redelegations of such functions to such
7 officers and employees under the Board as the Executive
8 Director may consider to be necessary or appropriate; and

9 ``(10) take such other action as may be necessary to
10 carry out the functions of the Executive Director.

11 ``(b) Each contract entered into under subsection (a) (3)
12 of this section shall--

13 ``(1) specify that the private business concern
14 managing investments for the Thrift Savings Fund under
15 such contract shall make, consistent with prudent
16 criteria for financial investment, such investments as,
17 in the judgment of such private business concern, will
18 maximize the return on such investments; and

19 ``(2) provide for the payment of fees to such
20 business concern in an amount not exceeding the amount
21 equal to one-quarter of one percent of the sums in the
22 Thrift Savings Fund invested by such business concern
23 under the contract.

24 ``§ 8495. Administrative provisions

25 ``(a) The Board shall meet--

26 ``(1) not less than four times during each fiscal
27 year at such times as the Board shall establish; and

28 ``(2) at additional times at the call of the
29 Executive Director.

30 ``(b) (1) The Board shall perform the functions and
31 exercise the powers of the Board on a majority vote of a
32 quorum of the Board.

33 ``(2) A vacancy on the Board shall not impair the
34 authority of a quorum of the Board to perform the functions

079910.046

S.I.C.

63

1 and exercise the powers of the Board.

2 "(c) Four members of the Board shall constitute a quorum
3 for the transaction of business.

4 "(d) Each member of the Board who is not a Federal
5 employee shall be compensated at the daily rate of basic pay
6 applicable to a position described in section 5315 of this
7 title for each day or part thereof during which such member
8 is engaged in performing a function of the Board.

*Level
IV*

9 "(e) The accrued annual leave of any employee who is a
10 member of the Board shall not be charged for any time used in
11 performing service for the Board during any work period.

12 "\$ 8496. Fiduciary responsibilities; liability and penalty

13 "(a) For the purposes of this section--

14 "(1) the term 'fiduciary' means--

15 "(A) with respect to the Thrift Savings Fund,
16 each member of the Board; and

17 "(B) with respect to sums from the Thrift
18 Savings Fund invested and managed by a private
19 business concern under a contract entered into under
20 section 8494 (a) (3) of this title--

21 "(i) such private business concern; and

22 "(ii) each owner, director, officer, and
23 employee of such private business concern;

24 "(2) the term 'party in interest' includes--

25 "(A) any fiduciary;

26 "(B) any counsel to a fiduciary;

27 "(C) any person providing services to the Board;

28 "(D) a labor organization;

29 "(E) a spouse, ancestor, lineal descendant, or
30 spouse of a lineal descendant of a person described
31 in subclause (A), (B), or (C) of this clause; and

32 "(F) a corporation, partnership, or trust or
33 estate of which, or in which, 50 percent or more of--

34 "(1) the combined voting power of all

079917.746

S.I.C.

64

1 classes of stock entitled to vote or the total
2 value of shares of all classes of stock of such
3 corporation;

4 "(ii) the capital interest or profits
5 interest of such partnership; or

6 "(iii) the beneficial interest of such trust
7 or estate,

8 is owned directly or indirectly, or held by a person
9 described in subclause (A), (B), (C), or (E) of this
10 clause; and

11 "(3) the term 'person' means an individual,
12 partnership, joint venture, corporation, mutual company,
13 joint-stock company, trust, estate, unincorporated
14 organization, association, or labor organization.

15 "(b) (1) A fiduciary shall discharge his
16 responsibilities with respect to the Thrift Savings Fund or
17 applicable portion thereof solely in the interest of the
18 participants and beneficiaries and--

19 "(A) for the exclusive purpose of--

20 "(i) providing benefits to participants and
21 their beneficiaries; and

22 "(ii) defraying reasonable expenses of
23 administering the Thrift Savings Fund or applicable
24 portions thereof;

25 "(B) with the care, skill, prudence, and diligence
26 under the circumstances then prevailing that a prudent
27 man acting in a like capacity and familiar with such
28 matters would use in the conduct of an enterprise of a
29 like character and with like objectives; and

30 "(C) to the extent permitted by section 8427 of this
31 title, by diversifying the investments of the Thrift
32 Savings Fund or applicable portions thereof so as to
33 minimize the risk of large losses, unless under the
34 circumstances it is clearly prudent not to do so.

1 “(2) No fiduciary may maintain the indicia of ownership
2 of any assets of the Thrift Savings Fund outside the
3 jurisdiction of the district courts of the United States.

4 “(c) (1) A fiduciary shall not cause the Thrift Savings
5 Fund or any portion thereof to engage in a transaction, if
6 the fiduciary knows or should know that such transaction
7 constitutes a direct or indirect--

8 “(A) sale or exchange, or leasing, of any property
9 between the Thrift Savings Fund and a party in interest;

10 “(B) lending of money or other extension of credit
11 between the Thrift Savings Fund and a party in interest;

12 “(C) furnishing of goods, services, or facilities
13 between the Thrift Savings Fund and a party in interest;
14 or

15 “(D) transfer to, or use by or for the benefit of, a
16 party in interest, of any assets of the Thrift Savings
17 Fund.

18 “(2) A fiduciary shall not--

19 “(A) deal with any assets of the Thrift Savings Fund
20 in his own interest or for his own account;

21 “(B) act, in his individual or any other capacity,
22 in any transaction involving the Thrift Savings Fund for
23 the benefit of a party (or represent a party) whose
24 interests are adverse to the interests of the Thrift
25 Savings Fund or the interests of its participants or
26 beneficiaries; or

27 “(C) receive any consideration for his own personal
28 account from any party dealing with such Thrift Savings
29 Fund in connection with a transaction involving assets of
30 the Thrift Savings Fund.

31 “(3) For the purposes of this subsection, a transfer of
32 real or personal property by a party in interest to a plan
33 shall be treated as a sale or exchange if the property is
34 subject to a mortgage or similar lien which the plan assumes

079910.046

S.I.C.

66

1 or if it is subject to a mortgage or similar lien which a
2 party-in-interest placed on the property within the 10-year
3 period ending on the date of the transfer.

4 “(d) (1) (A) Any fiduciary that breaches the
5 responsibilities, duties, and obligations set out in
6 subsection (b) of this section or violates subsection (c) of
7 this section shall be liable to make good to the Thrift
8 Savings Fund any losses to such fund resulting from each such
9 breach or violation and to restore to such fund any profits
10 made by the fiduciary through use of assets of such fund by
11 the fiduciary, and shall be subject to such other equitable
12 or remedial relief as a court considers appropriate. A
13 fiduciary may be removed for a breach referred to in the
14 preceding sentence.

15 “(B) The Attorney General of the United States may
16 assess a civil penalty against a party in interest engaging
17 in a transaction prohibited by subsection (c) of this
18 section. The amount of such penalty may not exceed five
19 percent of the amount involved (as defined in section 4975
20 (f) (4) of the Internal Revenue Code of 1954); except that,
21 if the transaction is not corrected (in such manner as the
22 Attorney General shall prescribe by regulation consistent
23 with section 4975 (f) (5) of the Internal Revenue Code of
24 1954) within ninety days after the date the Attorney General
25 transmits notice to the party in interest (or such longer
26 period as the Attorney General may permit), such penalty may
27 be in an amount not more than 100 percent of the amount
28 involved.

29 “(C) A fiduciary shall not be liable under subparagraph
30 (A) of this paragraph with respect to a breach of fiduciary
31 duty under subsection (b) of this section committed before
32 becoming a fiduciary or after ceasing to be a fiduciary.

33 “(2) A civil action may be brought in the district
34 courts of the United States--

279910.045

S.I.C.

67

1 “(A) by the Attorney General of the United States--

2 “(1) to determine and enforce a liability under
3 paragraph (1) (A) of this subsection; or

4 “(11) to collect any civil penalty under
5 paragraph (1) (B) of this subsection; or

6 “(B) by the Attorney General of the United States,
7 any participant, former participant, other beneficiary,
8 or fiduciary--

9 “(1) to enjoin any act or practice which
10 violates any provision of subsection (b) or (c) of
11 this section; or

12 “(11) to obtain any other appropriate equitable
13 relief to redress a violation of any such provision.

14 “(3) An action may not be commenced under paragraph (2)
15 of this subsection with respect to a fiduciary's breach of
16 any responsibility, duty, or obligation under subsection (b)
17 of this section or a violation of subsection (c) of this
18 section after the earlier of--

19 “(A) six years after (1) the date of the last action
20 which constituted a part of the breach or violation, or
21 (11) in the case of an omission, the latest date on which
22 the fiduciary could have cured the breach or violation;
23 or

24 “(B) three years after the earliest date on which
25 the plaintiff had actual knowledge of the breach or
26 violation; except that, in the case of fraud or
27 concealment, such action may be commenced not later than
28 six years after the date of discovery of such breach or
29 violation.”.

30 (b) The table of chapters at the beginning of part III of
31 such title is amended by inserting after the item relating to
32 chapter 83 the following new item:

 “84. Civil Service Pension System. 8401”.

33 TITLE II--AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954 AND

E79910.246

S.I.C.

68

THE SOCIAL SECURITY ACT

AMENDMENTS RELATING TO SOCIAL SECURITY

Sec. 201. (a) Section 210 (a) (5) of the Social Security Act is amended--

(1) by striking out ``or'' at the end of subparagraph (F);

(2) by striking out the semicolon at the end of subparagraph (G) and inserting in lieu thereof `` , or''; and

(3) by adding at the end thereof the following new subparagraph:

``(H) service performed by an individual after such individual has transferred to or commenced participation in the Civil Service Pension System pursuant to section 8471 of title 5, United States Code;''.

(b) Section 3121 (b) (5) of the Internal Revenue Code of 1954 is amended--

(1) by striking out ``or'' at the end of subparagraph (F);

(2) by striking out the semicolon at the end of subparagraph (G) and inserting in lieu thereof `` , or''; and

(3) by adding at the end thereof the following new subparagraph:

``(H) service performed by an individual after such individual has transferred to or commenced participation in the Civil Service Pension System pursuant to section 8471 of title 5, United States Code;''.

TITLE III--MISCELLANEOUS AND CONFORMING AMENDMENTS

PAY RETENTION FOR CERTAIN DISABLED EMPLOYEES

Sec. 301. Section 5363 (a) of title 5, United States Code, is amended--

279910.246

S.I.C.

69

1 (1) by striking out ``or'' at the end of paragraph
2 (2);
3 (2) by redesignating paragraph (3) as paragraph (4);
4 and
5 (3) by inserting before paragraph (4), as
6 redesignated by clause (2), the following new paragraph
7 (3):

8 `` (3) who--

9 `` (A) is removed from a position subject to this
10 subchapter by reason of being disabled (for the
11 purposes of subchapter V of chapter 84 of this
12 title); and

13 `` (B) is placed in another position which is
14 subject to this subchapter and is in a lower grade
15 than the previous position; or''.

16 MISCELLANEOUS AMENDMENTS TO CHAPTER 83 OF TITLE 5, UNITED
17 STATES CODE

18 Sec. 302. (a) Section 8331 (1) (G) of title 5, United
19 States Code, is amended to read as follows:

20 `` (G) an individual first employed by the
21 government of the District of Columbia before the
22 effective date of the Civil Service Pension Reform
23 Act of 1985;''.

24 (b) Section 8332 of such title is amended by adding at
25 the end thereof the following new subsections:

26 `` (n) (1) Except as provided in section 8473 (b) (1) of
27 this title, service performed by a participant in the Civil
28 Service Pension System under chapter 84 of this title is not
29 creditable under this section.

30 `` (2) Service creditable under this section and
31 transferred for credit to the Civil Service Pension System
32 under chapter 84 of this title is not creditable under this
33 section.``.

34 (c) Subsection (a) of section 8334 of title 5, United

879910.746

70

S.I.C.

1 States Code, is amended--

2 (1) in the first sentence of paragraph (1), by
3 striking out "The employing" and inserting in lieu
4 thereof "Except as provided in paragraph (3) of this
5 subsection, the employing"; and

6 (2) by adding at the end thereof the following new
7 paragraph:

8 "(3) (A) In the case of an employee or Member who was
9 subject to this subchapter before January 1, 1984, and whose
10 service--

11 "(1) is employment for the purposes of title II of
12 the Social Security Act and chapter 21 of the Internal
13 Revenue Code of 1954; and

14 "(ii) is not creditable service for any purpose
15 under chapter 84 of this title,

16 an employing agency shall deduct and withhold from the basic
17 pay of the employee or Member under paragraph (1) of this
18 subsection during any pay period only the amount computed
19 pursuant to subparagraph (B) of this paragraph.

20 "(B) The amount deducted and withheld from basic pay
21 during any pay period pursuant to subparagraph (A) of this
22 paragraph in the case of an employee or Member referred to in
23 such subparagraph shall be the excess, if any, of--

24 "(i) the amount that would be deducted and withheld
25 under paragraph (1) of this subsection but for this
26 paragraph, over

27 "(ii) the amount of the employment taxes deducted
28 and withheld from the basic pay of the employee or Member
29 for the pay period pursuant section 3101 (a) of the
30 Internal Revenue Code of 1954."

31 (c) Section 8339 of title 5, United States Code, is
32 amended by adding at the end thereof the following new
33 subsection:

34 "(o) (1) Effective on the first day of the month in

For member
of Congress,
~~8,000~~
8,000
- 7.65 SS
= 950
up to max wage
0 for
non-members
up to max
wage

079910.046

S.I.C.

71

1 which an annuitant or a survivor becomes 62 years of age, the
 2 annuity or survivor annuity computed under the other
 3 subsections of this section shall be reduced by an amount
 4 equal to the amount (if any) by which the annuitant's or
 5 surviving annuitant's benefit under title II of the Social
 6 Security Act exceeds the amount of such benefit to which he
 7 would be entitled if the service described in paragraph (2)
 8 of this subsection were not taken into account.

*And in
 rightware*

9 "(2) The service described in this paragraph is the
 10 civilian service that is covered by amounts deducted and
 11 withheld as provided in section 8334 (a) (3) of this title
 12 and is taken into account for the purpose of computing--

*CSR ded
 SS ded*

13 "(A) the annuity or survivor annuity; and
 14 "(B) benefits under such title of the Social
 15 Security Act."

16 CONFORMING PROVISIONS FOR OTHER RETIREMENT SYSTEMS
 17 Sec. 303. (a) Section 823 of the Foreign Service Act of
 18 1980 (22 U.S.C. 4043) is amended by adding at the end thereof
 19 the following new subsection:

20 "(d) Notwithstanding any other provision of this
 21 section, a participant in the Civil Service Pension System
 22 under chapter 84 of title 5, United States Code, may not be a
 23 participant in the Foreign Service Retirement and Disability
 24 System under this title."

25 (b) Section 203 of the Central Intelligence Agency
 26 Retirement Act of 1964 for Certain Employees (50 U.S.C. 403
 27 note) is amended by adding at the end thereof the following
 28 new sentence: "A participant in the Civil Service Pension
 29 System under chapter 84 of title 5, United States Code, may
 30 not be a participant in the Central Intelligence Agency
 31 Retirement and Disability System under this Act."

32 (c) Section 1005 (d) of title 39, United States Code, is
 33 amended to read as follows:

34 "(d) Officers and employees of the Postal Service (other

079912.046

72

S.I.C.

1 than the Governors) shall be covered by chapters 83 and 84 of
 2 title 5 according to the provisions of such chapters. The
 3 Postal Service shall withhold from pay and shall pay into the
 4 Civil Service Retirement and Disability Fund the amounts
 5 specified in or determined under such chapter 83. The Postal
 6 Service shall pay into the Civil Service Retirement and
 7 Disability Fund the amounts specified or determined under
 8 subchapters II and V of such chapter 84. The Postal Service
 9 shall pay into the Civil Service Thrift Savings Fund the
 10 amounts specified in or determined under subchapter III of
 11 such chapter 84.".

12 HEALTH BENEFIT PLAN ELIGIBILITY FOR FORMER SPOUSES

13 Sec. 304. (a) Section 8901 (10) of title 5, United States
 14 Code, is amended--

15 (1) in subparagraph (C) (1)--

16 (A) by inserting "or 8457" after "8345 (j)";

17 and

18 (B) by inserting "or 8434" after "8341 (h)";

19 and

20 (2) in subparagraph (C) (11)--

21 (A) by inserting "or 8434" after "8341 (h)";

22 and

23 (B) by inserting "or 8457" after "8345 (j)".

24 (b) Paragraph (1) of section 8905 (c) of such title is
 25 amended--

26 (1) in subparagraph (F), by inserting "or 8435 (a)

27 (1)"; and

28 (2) in the second sentence--

29 (A) by inserting "or 8434" after "8341 (h)";

30 and

31 (B) by inserting "or 8457" after "8345 (j)".

32 TITLE IV--AUTHORIZATION AND EFFECTIVE DATES

33 FIRST YEAR EXPENSES OF THE BOARD

34 Sec. 401. (a) Notwithstanding section 8426 (c) (3) of

079910.045

73

S.I.C.

1 title 5, United States Code (as added by section 101 of this
 2 Act), the expenses incurred in the administration of the
 3 Civil Service Thrift Investment Board established by section
 4 8491 (a) of such title (as added by section 101 of this Act)
 5 during fiscal year 1986 shall be paid from sums appropriated
 6 pursuant to subsection (b).

7 (b) There are authorized to be appropriated to the Civil
 8 Service Thrift Investment Board, for fiscal year 1986, such
 9 sums as may be necessary to pay the expenses incurred in the
 10 administration of the Civil Service Thrift Investment Board
 11 during such fiscal year.

12 EFFECTIVE DATES

13 Sec. 402. (a) Except as provided in subsection (b) or
 14 (c), this Act and the amendments made by this Act shall take
 15 effect ~~180 days after the date of enactment.~~ *me c.*

16 (b) Subchapter VIII of chapter 84 of title 5, United
 17 States Code (relating to the Civil Service Thrift Investment
 18 Board), as added by section 101, shall take effect on the
 19 date of enactment.

*why not
 1-1-86 or
 180 days if later?
 Should contribution
 provisions be
 fixed by pay periods?*